IN SERVICE: 10-8

A PEER READ PUBLICATION

JUSTICE INSTITUTE of BRITISH COLUMBIA

A newsletter devoted to operational police officers in Canada.

IN MEMORIAL

On September 7, 2009 21-year old Service de Police de la Ville de Levis, Quebec Constable Melanie Roy was killed in an automobile accident while responding to an emergency call.

Her vehicle went out of control and struck a bridge support. Another officer traveling in front of her noticed that she was no longer following and observed a large cloud of dust. He immediately turned around and located the crash.

She was transported to a local hospital where she succumbed to her injuries. Constable Roy had served with the agency for only three months.

Source: Officer Down Memorial Page available at www.odmp.org/canada

OFFICERS PAY TRIBUTE

On Sunday September 27, 2009 hundreds of law enforcement officers from Canada and the United States attended a memorial service at Stanley Park to honour fallen peace officers.

Highlights In This Issue

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Unless otherwise noted all articles are authored by Mike Novakowski, MA. 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 herein are not necessarily the opinions of the Justice Institute of British Columbia. "In Service: 10-8" welcomes your comments 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.

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

2010 FRASER VALLEY CRIMINAL JUSTICE CONFERENCE

See page 21

ADMISSION PROVIDES RPG FOR BREATH DEMAND

R. v. Vandal, 2009 SKCA 79

Two police officers on patrol at about 11:30 p.m. saw a truck with only one headlight. They followed the truck and activated the police car's emergency lights, but the truck did not stop for some blocks until it was in a driveway. The police parked behind the truck and observed the accused get out from the driver's seat and walk slowly and cautiously to the back of the truck. The officer asked the accused why he did not stop when signalled to do so, but received no answer. The officer then asked the accused if he had consumed any liquor that night and he said "Yes, sir, I've consumed more - I've had more than the legal limit." The accused had glazed eyes and smelled of alcohol as he walked slowly and cautiously back to the police car with the officer. At the police car the accused was advised of his right to counsel, given the standard police warning, and read the breathalyzer demand. He subsequently provided a breath sample of 210mg% and was charged with driving over 80mg%.

At trial in Saskatchewan Provincial Court the judge ruled that the arresting officer had the requisite grounds for the demand. The accused's failure to stop when the emergency police lights were engaged, his lack of response when asked why he did not stop, his statement that he had had more than the legal limit, his glazed eyes, slow and careful walk and the odour of liquor on his person all led to a valid s.254(3) *Criminal Code* demand. The accused was convicted. An appeal to the Saskatchewan Court of Queen's Bench was unsuccessful.

> "The test to determine if an officer has reasonable and probable grounds to believe an accused's ability to drive was impaired by alcohol has both a subjective and objective element. It was necessary for the officer to have reasonable grounds for believing that the [accused] had operated his motor vehicle, either while impaired by the consumption of alcohol ... or having consumed alcohol in such a quantity that the concentration in his blood exceeded the legal limit ..."

The accused then appealed to the Saskatchewan Court of Appeal arguing the lower courts erred in concluding that the arresting officer had reasonable and probable grounds to believe his ability to drive was impaired by alcohol. In his view, the appeal judge erred in finding that the arresting officer subjectively believed he had committed the offence and that the arresting officer's belief was objectively based on reasonable and probable grounds. In part, the accused submitted that his admission that he consumed more than the legal limit should not mean he was over 80mg% because people are not likely to know with a degree of precision what their blood alcohol concentration is and there was no evidence as to what the accused understood was the legal limit. He pointed out that there were other levels related to consuming alcohol under Saskatchewan's *Traffic Safety Act*, such as 40mg% found in s.146(1) warranting a twenty four hour prohibition.

"The test to determine if an officer has reasonable and probable grounds to believe an accused's ability to drive was impaired by alcohol has both a subjective and objective element," said Justice Lane for the unanimous Court. "It was necessary for the officer to have reasonable grounds for believing that the [accused] had operated his motor vehicle, either while impaired by the consumption of alcohol (s.253(1)(a)), or having consumed alcohol in such a quantity that the concentration in his blood exceeded the legal limit (s.253(1)(b))." The accused's admission that he was over the legal limit was sufficient, as the trial judge found, to give rise to the officer's subjective belief. As for the objective portion of the test, Justice Lane stated:

> In my view, the admission from the [accused] that he was driving after having consumed more than the legal limit, taken with the other observations made by the officer, also means his belief was

> objectively reasonable. The issue is not whether the admission ultimately turns out to be true and correct, the issue is merely whether it is sufficient in the totality of circumstances to supply reasonable and probable grounds for the demand. … [para. 12]

And it was not necessary for the Court to determine at what point in time the officer's belief that there were reasonable and probable grounds be assessed – at the time the officer formed the belief or at the time of the demand itself. "[T]he only indicia which changed between the two points in time was the smell of alcohol," said Justice Lane. "There was sufficient evidence without the indicia of the odour of alcohol to give rise to reasonable and probable grounds to lead the arresting officer to believe an offence had been committed." The accused's appeal was denied.

Complete case available at www.canlii.org

24-hour suspension

Saskatchewan's *Traffic Safety Act*

s. 146

(1) The driver's licence of a person whose venous blood contains not less than 40 milligrams of alcohol per 100 millilitres of blood is subject to suspension pursuant to this section.

(2) At any time and at any place, a peace officer may request a driver of a motor vehicle to surrender his or her driver's licence to the peace officer if the peace officer has reasonable grounds to believe that the driver may have consumed alcohol in an amount that would make his or her driver's licence liable to suspension.

(3) Subject to subsection (4), if a peace officer makes a request pursuant to this section for the surrender of a driver's licence, the driver's licence is suspended for 24 hours from the time of the request.

GANGSTERS GIVEN $2,000 FOR PREDICTABLE & AVOIDABLE CHARTER BREACHES

R. v. Brown, 2009 ONCA 633

Following a lengthy police investigation, about 1,200 Toronto police officers conducted a major police takedown on the Driftwood Crips gang. The gang was involved in trafficking firearms and drugs as well as acts of extreme violence. Approximately 100 gang affiliates were arrested and 86 of those were brought before bail court for their first appearance. However, they did not appear before a justice within 24 hours as required by s.503(1)(a) of the *Criminal Code*. No arrangements had been made by police or Crown before the takedown to ensure there would be adequate time and resources to accommodate the large number of detainees. The Crown was granted an adjournment to review the files on all matters, but some of the hearings were set well beyond the three day adjournment permitted by s.516(1).

Nine applicants brought *habeas corpus* applications to secure their immediate release or an earlier bail hearing date. The judge found the applicants' rights had been violated because they had not been brought before a justice within 24 hours and were remanded in custody longer than three days. In his view, ss.503(1)(a) and 516(1) ensure arrestees have an early opportunity for judicial review and a determination whether continued detention is warranted. He described these rights as "among the most important provisions of the Criminal Code", fortified by ss.10(c) (the right to habeas corpus) and 11(e) (the right to reasonable bail without just cause). The judge ruled there was no defensible reason for what happened, despite Crown's argument that any disclosure of the expected large scale arrest could compromise the police operation. The police operation was carefully planned and was many months in the making. Where resources are applied at the front end of the criminal justice process involving the investigation of crimes and the arrest of suspects, then resources should also be applied at the back end. The "sheer number of

persons arrested [did] not provide a justification for failure to abide by the requirements of the Criminal Code." The accuseds' *Charter* rights to liberty under s.7, arbitrary detention under s.9, and reasonable bail under s. 11(e) were breached. The judge denied the remedy of release but expedited the bail hearings and awarded each applicant $2,000 under s.24(1) as a just and appropriate remedy. The Crown appealed the order to pay costs to the Ontario Court of Appeal.

"Criminal proceedings are not brought by one party to vindicate a private interest but in the interest of the public at large ... There is a concern that if costs awards were routine, the discretion of the Crown when acting in the public interest would be unduly influenced or fettered."

Ordinarily, an accused person in a criminal case is not entitled to costs unless they can show "a marked and unacceptable departure from the reasonable standards expected of the prosecution." Justice Sharpe, authoring the unanimous judgement, put it this way:

> It has been recognized in many cases that while costs awards in favour of the winning party are a familiar feature of civil proceedings, they are rare in criminal cases ... This difference derives from the different purposes of civil and criminal proceedings. Civil cases are concerned with compensation and the efficient resolution of disputes. Costs awards compensate the successful litigant, at least partially, for the expense of litigation. Costs awards also serve as an important judicial tool to control proceedings, discourage unreasonable or inappropriate behaviour, and encourage out of court settlements. The threat of adverse costs awards discourages unnecessary or frivolous litigation and encourages parties to settle their disputes.
>
> Criminal proceedings are not brought by one party to vindicate a private interest but in the interest of the public at large ... [A] plaintiff brings an action for his own ends and to benefit himself; it is therefore just that if he loses he should pay the costs. A prosecutor brings proceedings in the public interest, and so should be treated more tenderly. There is a concern that if costs awards were routine, the discretion of the Crown when acting in the public interest would be unduly influenced or fettered... [references & internal quotes omitted, paras. 17-18]

In this case, the Crown's conduct was described by the application judge as "improper and unacceptable", caused by its failure to make the necessary arrangements to have sufficient court resources available:

> [T]he arrest of the [applicants] was part of an operation that involved careful and detailed planning. The central element of that careful and detailed plan was the sudden and sweeping arrest of a large number of suspects. The execution of such a plan was bound to overwhelm the ordinary capacity of the bail court to handle those arrested in a timely fashion. Regrettably, however, the otherwise careful and detailed plan entirely ignored the obvious fact that unless something was done to ensure that adequate court resources would be available on the morning of the sweeping arrests, chaos and the denial of the statutory and Charter rights of those arrested was inevitable.
>
> The [applicants] should not have been required to bring habeas corpus applications to secure their statutory and Charter rights. The situation that produced their need to resort to this remedy

HIGHLIGHT THE CHARTER RIGHT

s. 7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

.....

s. 9 Everyone has the right not to be arbitrarily detained or imprisoned.

.....

s.11(e) Any person charged with an offence has the right ... (e) not to be denied reasonable bail without just cause, ...

was entirely predictable. It could and should have been avoided. [paras. 22-23]

Here, the applications judge "had identified a systemic failure in the processing of the [accuseds] post-arrest which resulted in a serious violation of their rights, and he was entitled to mark his disapproval of what had occurred by ordering the Crown pay the costs of proceedings that should never have been required," said Justice Sharpe. "While the appropriate remedy in most cases involving delayed bail hearings will be to direct or conduct an expedited hearing, the application judge found this to be an exceptional case calling for an exceptional remedy." And even though this prosecution involved serious charges against dangerous individuals, any departure from the rights secured by the *Criminal Code* and the *Charter* could not be justified. "Quite apart from the need to respect the rights of those eventually found to be guilty, sweeps of this kind will often bring before the court bystanders who were simply in the wrong place at the wrong time," stated Justice Sharpe.

Although costs in criminal cases are an exceptional remedy to be awarded only in "rare" cases, this was one such case within the exceptional category calling for an award of costs. Without laying blame for the constitutional violations on any one prosecutor, the systemic failure of the Crown to take any steps to avoid the entirely predictable violation of the statutory and *Charter* rights of the accuseds supported the award of costs. And $2,000 per applicant was not unreasonable.

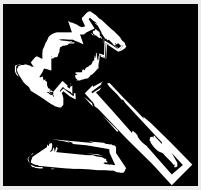
Complete case available at www.ontariocourts.on.ca

LATIN LEGAL LINGO

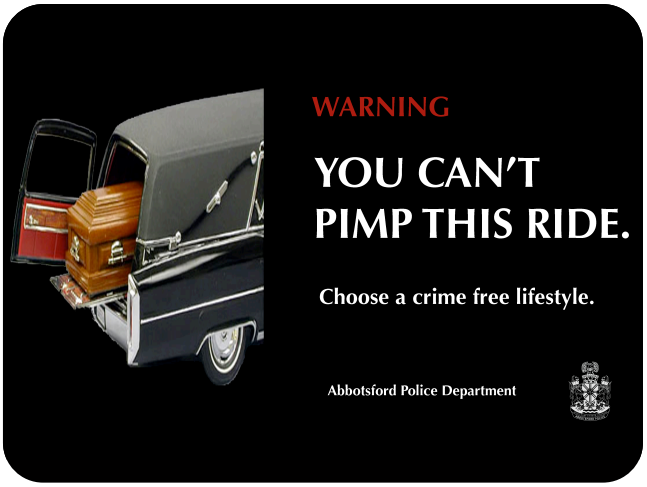
Habeas Corpus - "You have the body" - a prerogative writ used to determine the legality of a detention; an instrument to safeguard individual liberty against arbitrary and lawless state action.

LEGALLY SPEAKING:

Right to Silence



"The criminal process is both accusatorial and adversarial. Respect for individual autonomy and privacy dictates that when the prosecution levels a criminal accusation, it must investigate and prove its case without any compelled assistance from the target of that accusation. The constitutional right to silence, the constitutional protection against self-incrimination and the constitutionally protected presumption of innocence all reflect the fundamental importance of the principle protecting an accused from conscription to the cause of the prosecution. An accused is constitutionally entitled to say "prove it" and nothing more in answer to a criminal charge." - Ontario Court of Appeal Justice Doherty in *R. v. Wright*, 2009 ONCA 62 at para. 17.



ADULT ABORIGINAL INCARCERATION

A recently released Statistics Canada report entitled "The Incarceration of Aboriginal People in Adult Correctional Services" shows the disproportionate rate at which Aboriginals are incarcerated. Aboriginals are people identifying with North American Indian, Metis, or Inuit. Highlights of the report include:

- Aboriginal adults are more represented in custody than non-Aboriginal adults.
- In 2007/2008 there were 369,200 admissions to correctional services.

2007/2008 ADULT ADMISSIONS TO CORRECTIONAL SERVICES	
Admissions	**Percent**
Remand	41.8%
Provincial/Territorial Sentenced Custody	22.9%
Probation	22.0%
Conditional Sentences	4.7%
Community Release (CSC)	4.0%
Federal Sentenced Custody	1.4%
Other	3.2%

- Women accounted for 12% of all admissions to provincial and territorial sentenced custody and 6% of federal admissions. Aboriginal woman were more represented among the female correctional population than were Aboriginal men within the male correctional population.
- The median age of a person admitted to federal custody was 33 years.
- In 2007/2008 Aboriginal adults accounted for 22% of admissions to sentenced custody while representing only 3% of the Canadian population.

2007/2008 ABORIGINAL ADMISSIONS TO CORRECTIONAL SERVICES	
As a percentage of Canadian population	3%
Admissions	**Percent**
Remand	17%
Probation	16%
Conditional Sentences	19%
Provincial/Territorial Sentenced Custody	18%
Federal Sentenced Custody	18%

- In Saskatchewan Aboriginal adults represented 11% of the general population while representing 81% of admissions to provincial sentenced custody. Saskatchewan's incarceration rate of non-Aboriginals on Census Day in 2006 was 0.5 per 1,000 population while the incarceration rate for Aboriginals was 15.7 per 1,000 population. The Aboriginal incarceration rate in Saskatchewan is about 30 times higher than the non-Aboriginal incarceration rate.

Saskatchewan's Aboriginal & Non-Aboriginal Incarceration Rate		
Ages	Aboriginal Incarceration Rate per 1,000	Non-Aboriginal Incarceration Rate per 1,000
20-24	26.6	1.0
25-34	21.9	1.2
35-44	17.4	0.8
45-54	8.2	0.4
55+	1.6	0.1
All ages	15.7	0.5

Source: Statistics Canada, 2009, The Incarceration of Aboriginal People in Adult Correctional Services, catalogue no.85-002-X, Vol. 29, no. 3.

ABORIGINAL PEOPLE AS A PROPORTION OF ADMISSIONS TO CORRECTIONAL SERVICES					
Province	**% Population**	**% Remand**	**% Provincial/ Territorial Custody**	**% Probation**	**% Conditional Sentence**
British Columbia	4%	20%	21%	19%	17%
Alberta	5%	36%	35%	24%	16%
Saskatchewan	11%	80%	81%	70%	75%
Manitoba	12%	66%	69%	56%	45%
Ontario	2%	9%	9%	9%	12%
Quebec	1%	4%	2%	6%	5%
Newfoundland	4%	23%	21%	..	23%
New Brunswick	2%	9%	8%	8%	11%
Nova Scotia	2%	9%	7%	5%	7%
Prince Edward Island	1%	6%	1%	..	..
Yukon	22%	78%	76%	66%	62%
Northwest Territories	45%	85%	86%	..	..
Nunavut	78%	..	..	97%	97%

EYEWITNESS IDENTIFICATION DIFFERS FROM EYEWITNESS RECOGNITION

R. v. Ba, 2009 BCCA 400

A person was beaten and stabbed in a restaurant by at least two men. After the attack, the accused fled the scene but was found by police a short distance away with the assistance of a tracking dog. Some of his clothing was soaked in blood. The victim later selected the accused and identified him from a photo pack and said he was 100% sure. At trial in British Columbia Provincial Court the victim made an in-court identification at trial and testified he had seen the accused on two prior occasions and recognized him during the course of the attack. The defence did not challenge the admissibility of the photo line-up evidence but contested the weight to which it should be assigned. The accused was convicted of aggravated assault and assault with a weapon.

The accused appealed his convictions to the British Columbia Court of Appeal arguing, in part, that the trial judge failed to consider factors relevant to identification when he found this was a case of recognition rather than identification. But Justice Donald, delivering the opinion of the unanimous court, disagreed:

> There was, in my opinion, a solid evidentiary basis for the judge's finding that this was a case of recognition rather than identification of a person previously unknown to the victim.

> [T]he two categories are treated differently. .... "The distinction between cases of eyewitness identification of a person seen for the first time and cases where the witness recognizes someone previously known to them is well-discussed in the case authorities..."
>
> The main point taken by the [accused], as I understand it, is that by treating this as a case of recognition, the trial judge applied a less stringent standard for eyewitness identification which may have led him to disregard circumstances calling into question the reliability of the identification. First among those listed was the condition of the victim when he made his observation of the second attacker, said by him to be the [accused]. By then he had already suffered stab wounds, and blows from the first attacker and therefore the [accused] argues he was rendered unable to make an accurate identification.
>
> This was squarely before the judge. The gist of his findings on this point is that he accepted the victim's testimony about being able to see and recognize the [accused]. He found substantial confirmatory evidence including the blood soaked clothing, corroboration of the two prior encounters and the photo pack identification. [references omitted, paras. 8-11]

The accused's appeal was dismissed.

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

GAME BOOTH AT FAIR A 'PUBLIC PARK' FOR PROHIBITION ORDER

R. v. Perron, 2009 ONCA 498

The accused pleaded guilty to sexual interference and sexual touching against the complainants who were between the ages of 12 and 14. The accused's sentence included an order pursuant to s.161(1)(a) of the *Criminal Code*, prohibiting him from attending a public park where persons under the age of 14 were present or could reasonably be expected to be present. A few months later he was arrested while working in a game booth that involved throwing darts at balloons at the Super Ex, a fair being held on the grounds of Lansdowne Park in Ottawa. Lansdowne Park contains a football stadium, a civic centre with a hockey arena, and several other buildings. There were trees and grassy areas around the perimeter of the property and surrounding some of the buildings. There is also an extensive paved area that serves as a parking lot for events. The grounds are surrounded by a fence and are accessible to the public through several gates. There is an admission fee to gain entry. The Super Ex included mid-way rides, game booths, concert areas, food courts, and a petting zoo. The accused's game booth was located in a long corridor of game booths lined with stuffed animals and other trinkets that could be won as prizes. The corridor was on the paved area. The Super Ex was attended by what was described as a very young crowd, with a lot of young people who appeared to be between 12 and 16 years of age or even younger.

At trial in the Ontario Court of Justice the accused conceded that the Super Ex at Lansdowne Park was accessible to the public and was a place where persons under the age of 14 years were present or could reasonably have been expected to be present. However, the accused contested that he was attending a park. The trial judge found that the Super Ex at Lansdowne Park was a public park as that phrase is used in s.161(1)(a) and the accused was convicted.

The accused then appealed to the Ontario Court of Appeal arguing Super Ex was not a park within the meaning of s.161(1)(a). In his view, a park ordinarily, in its regular everyday use, referred to a green space, such as an area with lawns and gardens or forests and trees, which is set aside and maintained for recreational use by the public. What is in essence a parking lot cannot be turned into a park by virtue of the way it is being used. The Crown, on the other hand, submitted that a public park cannot be circumscribed by the physical geography of the land but must be significantly informed by the use made of it.

The Ontario Court of Appeal first noted that there was no definition of "public park" in the *Criminal Code*. As a result, the Court would need to use the

rules of statutory interpretation in defining its meaning:

> The purpose of s. 161(1)(a) is to protect children from becoming victims of sexual offences at the hands of those who have previously committed certain specified offences. The protection of this particularly vulnerable group in Canadian society must inform the task of construing the phrase in issue in this appeal.
>
> Section 161(1)(a) addresses the legislative objective by specifying a number of locations that an offender can be prohibited from attending. The context provided by the full list of locations is of assistance in construing the phrase in issue here. Some locations such as day care centers or school grounds are places where children will inevitably be present because of the activities carried on there. However, this is not necessarily so for other locations such as public parks. ... [N]ot all public parks are places where children are likely to be found. Wilderness parks for example are public parks where nothing goes on that is likely to attract children. However, consistent with the legislative objective, only public parks where children are present or can reasonably be expected to be present can be included in a prohibition order. In other words, Parliament has specified locations in s. 161(1)(a) because what goes on there makes it likely that young children will be present.
>
> The grammatical and ordinary sense of the words in s. 161(1)(a) is informed by the definitions of "park" found in the Canadian Oxford English Dictionary ... :
>
> > park/ park/ n. 1 a piece of land usu. with lawns, gardens, etc. in a town or city, maintained at public expense for recreational use. 2 a large area of government land kept in its natural state for recreational use, wildlife conservation, etc. 3 a large enclosed area of land etc., either public or private, used to accommodate wild animals in captivity (wildlife park). 4 (usu. in combination) a an area devoted to a specified purpose (industrial park). b an area developed for a particular form of recreation (snowboard park; water park; theme park). 5 N. Amer. an enclosed arena, area, stadium, etc. for sports events (esp. ballpark). 6 an area for motor vehicles etc. to be left in (trailer park). 7 the gear position or function in an automatic transmission in which the gears are locked, preventing the vehicle's movement. 8 a large enclosed piece of ground, usu. with woodland and pasture, attached to a stately home etc.
>
> The first six are of relevance here. All are specified locations characterized by what goes on there. For most of the six, it is some form of recreational activity.
>
> Finally, in construing the phrase describing the location that the [accused] is prohibited from attending, sufficient clarity must be given. An individual bound by a prohibition order should be able to know what it requires, since breach of the order constitutes a criminal offence. ... [references omitted, paras. 13-17]

"The purpose of s. 161(1) (a) is to protect children from becoming victims of sexual offences at the hands of those who have previously committed certain specified offences."

In this case, the Appeal Court rejected the accused's contention that only green space qualifies as a public park:

> ... The legislative purpose, the kinds of locations that can be included in a prohibition order, and the ordinary grammatical meaning of the words clearly focus on the kinds of recreational activities that the public can engage in at the particular location and whether they are likely to involve the presence of young children. There is nothing to suggest that a particular physical geography is a vital characteristic. Indeed there are many locations commonly referred to as parks which exhibit little if any greenery. Skateboard parks are but one example. While in a particular case the presence of greenery may help in identifying a location as a public park for the purposes of a prohibition order under s. 161(1)(a), I do not think that the absence of greenery necessarily excludes it.
>
> In my view, to breach this term of a prohibition order under s. 161(1)(a), the person bound by it must be attending at a defined or discrete location that is accessible to the public for recreational use that involves or is reasonably likely to involve children under the specified age. In particular cases, other factors may also be relevant, such as the presence of greenery or the public designation of the location as a park.

> Construed in this way, the phrase "public park… where persons under the age of fourteen years are present or can reasonably be expected to be present" best serves the legislative purpose and is most faithful to the ordinary and grammatical sense of the words in their legislative context. Moreover, it provides the clarity necessary for the person bound by the order to know the locations that must be avoided.

Justice Goudge concluded that the Super Ex at Lansdowne Park was a public park. The accused was "at a defined location to which the public had access for recreational use that included or could reasonably be expected to include the presence of persons under the age of fourteen years. Moreover, in this case, there was some greenery at the location although it was peripheral. Finally, the location itself was publicly designated as a park. A person in the [accused's] position would reasonably know that he cannot attend that location in those circumstances." The accused's appeal was dismissed.

Complete case available at www.ontariocourts.on.ca

CARNIVAL NOT A 'PLAYGROUND' FOR PROHIBITION ORDER

R. v. Lachapelle, 2009 BCCA 406

The accused was arrested after a police officer saw him walk to a hamburger stand at a carnival. The carnival, or amusement fair, visited the town once a year. It featured rides, games and food stands and it was held on a piece of private property. There was no fee for admission to the site but customers were charged for rides, food and games. The accused had an order under s.161 of the *Criminal Code* prohibiting him from attending any playground. He was subsequently charged with failing to comply with the prohibition order.

At trial in British Columbia Provincial Court the trial judge noted that there had been no "typical playground equipment" in the immediate vicinity of where the accused had been found, but that children had been using the rides some 20 to 30 paces away, and running and playing in an open area. The arresting officer, in describing the carnival as the "ultimate playground" for area residents, testified that many families were at the carnival with young children, that some nine or ten-year-olds were without adult supervision and that the carnival was a "magnet" for the children of area. The accused, on the other hand, opined that he was not prohibited from going to the carnival because it was located on a private hayfield. He said he was only there to have a burger with his aunt.

The trial judge was not satisfied that "public park" included a carnival located on private land even though the public had access to it and children under 14 could be expected to be present. In his analysis, a "public park" was ordinarily a place "set aside" for use by the public, and more than a place accessible to the public. As for the meaning of "playground", he ruled that a playground for the purposes of s.161 must be something more than someone playing on a piece of ground, otherwise a vacant lot, a street hockey game, or many other activities in a public area could be interpreted as a playground. The accused was acquitted.

The Crown then appealed to the British Columbia Supreme Court. The appeal judge rejected the Crown's submission that the carnival was a "public park" because the proposed analysis would require the individual and the court to determine whether the recreational use and degree of access at the time would qualify the location as a "public park" rather than deciding whether the geographical location was set aside or designated as such. As for whether the carnival was a "playground", a similar concern arose. It too would require the individual and the court to analyze and assess the nature of the activity carried on or likely to be carried on at a location at a particular time. A playground is commonly understood to be an area with swings, climbing equipment or other facilities designed for children and is usually located in a park or school or other location established by a community and set aside or designated as such. The Crown's appeal was dismissed.

The Crown then appealed to the British Columbia Court of Appeal arguing the lower courts wrongly

focussed on the "designation" of a place rather than the manner in which it is being used. In the Crown's view, the appeal judge drew an overly narrow definition of the word "playground". Instead, the Crown submitted that "playground" should be interpreted to refer to "areas where children are likely to congregate for the purposes of play," a meaning consistent with dictionary definitions of "playground". Justice Newbury, writing the unanimous decision, noted there were two areas of tension arising with the construction of "playground" as it appears in s.161(1)(a).

- a tension between the designation of a space and the activities carried on there. One being "an activity-centred approach that looks to 'what goes on there' rather than what the space is called or 'designated'."

- a tension between the ordinary or grammatical meaning of a word and the context in which it is used. "When a statutory provision is to be interpreted the word or words in question should be considered in the context in which they are used, and read in a manner which is consistent with the purpose of the provision and the intention of the legislature ... If the ordinary meaning of the words is consistent with the context in which the words are used and with the object of the act, then that is the interpretation which should govern."

The Court of Appeal concluded that the carnival was not a "playground":

> In my respectful view, we would be permitting context to overwhelm the ordinary and grammatical meaning of the word "playground" if we were to accede to the Crown's argument. If it were correct, the term would include a cul de sac at the end of a street where children play hockey, a courtyard between two office towers where older children play with skateboards, or a private driveway with a basketball hoop. In my opinion, these are not ordinarily referred to as "playgrounds" because they are not outdoor areas whose purpose is to provide children with a place to play. I do not suggest that a "playground" must necessarily be a permanent structure or facility, nor that particular facilities or equipment must be provided, but the purpose of the site should be clear. (Usually the purpose of a playground is made evident by facilities such as swings.) I do suggest that "what goes on there" is not the only criterion incorporated by the ordinary and grammatical meaning of the word "playground". Most of the dictionary definitions mentioned above connote a purpose for which the space is intended, rather than merely the use of space, whether temporary or permanent, formal or informal. By keeping sight of this "ordinary sense" of the term, a balance may be achieved between the objective of protection of children and the principle that an offender who is subject to an order under s. 161 should be in a position to know where he is allowed and not allowed to be found. As well, the overbreadth problem ... may be avoided.
>
> I conclude, then, that ... the ordinary meaning of "playground" [refers] to an outdoor area the purpose of which is to accommodate play by children. Overall, the carnival was a commercial operation intended for the amusement of the public. The "public" of course includes children, but we were not referred to any evidence to the effect that children's play was its main object or purpose. A carnival may have rides intended for children but will also have other amusements intended for adults or for families generally. No doubt a carnival in Gitanmaax is different from a larger operation such as the P.N.E. in Vancouver, but I do not think that either would be referred to as a "playground" in the grammatical and ordinary sense of the word, even read in the context of s.161 and harmoniously with the object and scheme of the Code and the intention of Parliament. Had it been Parliament's intention to prohibit sexual offenders such as [the accused" from attending at any place where children are present or may be expected to be present for purposes of play, it would have been an easy matter to say so.
>
> Finally, it should be noted that the Crown's argument on this appeal was based on the notion that the carnival as a whole constituted as a "playground". It may well be that in appropriate circumstances a 'sub-area' of a multi-purpose site could be said to constitute a "playground" within the meaning of s. 161(1)(a) of the Code. That situation did not arise in this case, however, since there was no finding that

> the carnival included an area intended only for children's play and in any event, [accused] was arrested in a line-up for food some distance from where any rides were located. [references omitted, paras. 31-33]

The Crown's appeal was dismissed.

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

Editor's note: Crown was granted leave to appeal on the sole issue of whether the carnival was a "playground" for the purpose of the s.161(1) order. Leave was not granted for the interpretation of the meaning of "public park".

KNOWLEDGE OF BARREL LENGTH IMMATERIAL TO PROHIBITED FIREARM CHARGE

R. v. Williams, 2009 ONCA 342

After receiving a tip from a confidential informant, Toronto's Guns and Gang Unit made a high-risk takedown of a motor vehicle thought to be driven by an individual armed with a weapon. The accused was not the suspected individual, but he was a passenger in the vehicle. When he exited the vehicle at the request of the police, he was carrying a loaded Krieghoff Suhl 9 millimetre Luger handgun with a barrel length of 102.07 millimetres - a prohibited weapon - in the waistband of his pants. The gun had ammunition in the magazine and the chamber. The accused was charged with eight counts relating to the handgun, but was only convicted of possessing a firearm without a licence or a registration certificate. He was sentenced to 9 months in custody in addition to 15 months credit for pre-trial custody – the equivalent of 2 years' imprisonment. But he was acquitted of possessing a loaded prohibited firearm. The trial judge sitting in the Ontario Superior Court of Justice held that the accused's ignorance of the length of the barrel of the handgun in question negated the *mens rea* necessary for a conviction under s.95(1) of the *Criminal Code*. The other charges were either dismissed or withdrawn by the Crown.

"Knowledge that the barrel of the handgun measures 105 millimetres, or more or less than that length – i.e., of whether the handgun is 'prohibited' or 'restricted' – is immaterial."

The Crown appealed the accused's acquittal for possession of a loaded prohibited firearm to the Ontario Court of Appeal arguing the accused did have the necessary *mens rea* for the offence. The accused, on the other hand, admitted that the handgun was a prohibited weapon, that it was found on his person, that it was loaded, and that he was not licenced nor did he have a registration certificate for the gun. But he submitted he did not have the necessary *mens rea* because he was unaware that the barrel was shorter than 105 millimetres - the demarcation between a prohibited firearm and a restricted firearm under the *Criminal Code*. He never measured the the gun nor did he have a reason to believe it was 102.07 millimetres. Thus, he did not know that the firearm was "prohibited."

Justice Blair, however, disagreed with the accused.

> In my view, the mens rea under s. 95(1) is satisfied where the offender knew that he or she was in possession of a loaded firearm. Knowledge of the length of the handgun's barrel is not part of the mens rea required for the offence created by s. 95(1), and consequently, the trial judge erred in acquitting the [accused] on this count.
>
> Section 95(1) makes it an offence to possess "a loaded prohibited firearm or restricted firearm …," unless the person possessing the firearm has a licence to do so and a registration certificate for the firearm. There are not two offences – possession of a loaded prohibited firearm, and possession of a loaded restricted firearm. Rather, there is only one offence: possession of a loaded firearm, whether prohibited or restricted. ... [paras. 12-13]

And further:

> It is clear that s. 95(1) creates only one offence, the gravamen of which is the possession of a loaded firearm. It matters not whether the firearm is "prohibited" or

> "restricted." The offence is the same. The potential penalties are the same under s. 95(2). The mens rea required for conviction under s. 95(1), therefore, is simply knowledge by the offender that he or she is in possession of a firearm – in this case, a handgun – that is loaded. Here, there is no doubt the [accused] knew he was in possession of a loaded handgun. It is therefore unnecessary to consider whether some other mental state – for example, wilful blindness – would be sufficient to establish "knowledge".
>
> This interpretation is consistent with the language of the Code and with the purpose of the provision and the intent of Parliament. The offence created by s. 95(1) is designed to protect the public from the danger posed by people with loaded firearms. It is intended to catch all unauthorized loaded handguns. A "prohibited firearm" – in the context of handguns – is defined in s. 84 as a handgun that has the characteristics set out therein. A "restricted firearm" is defined in s. 84 (again, in the context of handguns) to mean "a handgun that is not a prohibited firearm". Consequently, a handgun is either a restricted or a prohibited firearm. There are no other handguns under the Code. That is why the language forbids the possession of "a loaded prohibited firearm or restricted firearm" .... [paras. 16-17]

Justice Blair also found the accused's argument that the Crown must prove *mens rea* in relation to the type of weapon specified in the indictment would create an unwarranted hurdle for the Crown. :

> Accused persons could always assert that they had not measured or made any enquiries about the length of the handgun's barrel. Accordingly, regardless of the way in which the charge is framed, the Crown would rarely, if ever, be able to obtain a conviction. Where the charge is possession of a loaded prohibited firearm, the argument will be that the accused person did not know that the length of the barrel was 105 mm or less and therefore lacked the requisite mens rea that the gun was a prohibited firearm. Where the charge is possession of a loaded restricted firearm, the same argument would be made with respect to the length over 105 mm. If the Crown charged possession of a loaded prohibited firearm or restricted firearm – adopting the exact language of the offence created – the accused will submit that the Crown must prove knowledge of one or the other, but he or she just did not know either! To give effect to the language and purpose of s. 95(1), and to the intention of Parliament, it is only necessary to give to the mens rea component its common sense meaning: the requisite mental element will be established where the Crown proves that the accused was knowingly in possession of a loaded prohibited or restricted handgun that he or she was not legally entitled to possess. Knowledge that the barrel of the handgun measures 105 millimetres, or more or less than that length – i.e., of whether the handgun is "prohibited" or "restricted" – is immaterial. [para. 18]

And further:

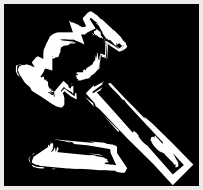
> [U]nder s. 95(1) of the Code, the offence is the possession of a loaded firearm. Whether the firearm is prohibited or restricted does not matter. The common denominator in the comparison between the two types of offences is that the actus reus (possession of a forbidden item) and the mens rea (knowledge of the characteristics that make it a forbidden item) do not relate to different crimes but rather to the same crime in each case. [para. 21]
>
> ... ...
>
> [T]he language of s. 95(1) creates only one offence: possession of a loaded firearm (prohibited or restricted). Since a handgun – the loaded firearm in this instance – must by definition be either a prohibited or a restricted firearm, convicting the [accused] of the offence with which he was charged (possession of a loaded prohibited firearm) knowing that he was in possession of a loaded handgun, does not involve transferring to him an intention relevant to one crime in order to convict him of another. [para. 23]

The Crown's appeal was allowed and a conviction was entered.

Complete case available at www.ontariocourts.on.ca

LEGALLY SPEAKING:

ILLICIT DRUG TRADE



"[I]llicit drug trade in Canada is the source of much violence. Some of it involves vendors at war with one another over territory and perceived slights, and much of it involves those who are users committing offences up to the level of robbery in order to acquire the funds needed to support habits and addictions." - Alberta Court of Appeal in R. v. Morris, 2009 ABCA 303 at para. 14.

COLD CALLING SUSPECT DIAL-A-DOPE NUMBER AMOUNTED TO ENTRAPMENT

R. v. Swan, 2009 BCCA 142

The accused was arrested following an undercover dial-a-dope operation. A police officer had compiled a list of telephone numbers that were suspected of being associated to persons involved in dial-a-dope transactions. He emailed the entire police department and asked them to get names or phone numbers or the best tip they could on a dial-a-doper. The officer received 150-250 telephone numbers (tips) which came in various ways; email, matchbooks, napkins, teared off pieces of paper, Crimestoppers tips, or just a phone number on a piece of paper. These numbers were then given to other officers working on the project who would try and make a drug deal and an arrest by calling the telephone number and speaking with whomever answered the call. Telephone calls based on these tips were 95% cold calls - made to an unknown person, unknown name, everything unknown from start to finish. The methodology followed is that the undercover officers make telephone calls to each number until they reach someone who will agree to sell them drugs. They then arrange for a meet, exchange cash for drugs and arrest the seller. There was no set script for the initiating telephone call, but the accused answered one of these calls. He said he was working and the officer said he needed "40 up" - slang for $40 worth of cocaine. The accused agreed to meet and provided the officer with powdered cocaine in exchange for $40. He was arrested and charged.

At trial in British Columbia Provincial Court the accused plead guilty to trafficking in cocaine and possessing cocaine for the purpose of trafficking. However, he sought a judicial stay of proceedings on the basis that he was entrapped. The trial judge heard expert evidence that the dial-a-dope trade in illicit drugs is more anonymous, more mobile, and more difficult to investigate than "buy and bust" street level trafficking which lends itself more readily to alternative police investigative techniques, including surveillance. The trial judge found the police conduct was reasonable and lawful and they were involved in a bona fide investigation. It did not amount to random virtue testing and therefore was not entrapment.

The accused appealed to the British Columbia Court of Appeal arguing the police entrapped him and that a judicial stay of proceedings should have been entered. In his view, the police did not have a reasonable suspicion that he was engaged in drug trafficking when they offered him an opportunity to commit the offences and, instead, were engaged in random virtue testing. He submitted the police were making cold-calls on nothing more than mere suspicion and that the police did not attempt to verify their sources before making these calls, even where it was possible to do so, and that verification of tips was regarded as virtually irrelevant in such an investigation. Because the police did not limit the scope or target area of the investigation to something narrower than everywhere within the cell phone's reach or every number which happened to appear on the unsubstantiated police list of phone numbers, the police were not engaged in a bona fide investigation. The Crown, on the other hand, contended that the police conduct did not amount to random virtue testing and that the investigation was bona fide.

Entrapment

Justice Prowse, writing the opinion of the British Columbia Court of Appeal, first reviewed the law of entrapment. The defence of entrapment "is based on the notion that limits should be imposed on the ability of the police to participate in the commission of an offence" and that, "[a]s a general rule, it is expected in our society that the police will direct their attention towards uncovering criminal activity that occurs without their involvement". The defence of entrapment is available in two ways:

1. the authorities provide a person with an opportunity to commit an offence without acting on a reasonable suspicion that this person is already engaged in criminal activity or pursuant to a bona fide inquiry. A reasonable suspicion is something more than a mere suspicion but something less than a belief based upon reasonable grounds. And the "'reasonable suspicion' must exist either with respect to the person being targeted, or with respect to the area being targeted." A bona fide inquiry involves the police presenting the opportunity to commit a particular crime to persons who are associated with a location where it is reasonably suspected that criminal activity is taking place. In these cases, the police may not know the identity of specific individuals, but they may know a particular location or area where it is reasonably suspected that certain criminal activity is occurring making it permissible to provide opportunities to people associated with the location under suspicion, even if these people are not themselves under suspicion. This type of randomness is permissible within the scope of a bona fide inquiry. The defence bears the onus of establishing entrapment by proving, on a balance of probabilities, that there was no reasonable suspicion nor a bona fide inquiry; or

2. although having such a reasonable suspicion or acting in the course of a bona fide inquiry, the police go beyond providing an opportunity and induce the commission of the offence.

Random virtue-testing, on the other hand, arises when a police officer presents a person with the opportunity to commit an offence without a reasonable suspicion that:

- the person is already engaged in the particular criminal activity, or
- the physical location with which the person is associated is a place where the particular criminal activity is likely occurring.

Here, just because the investigating officer received a telephone number from the list did not give rise to a reasonable suspicion that the person who answered the phone was engaged in drug-related activity. Rather, this piece of information, at best, amounted to "mere suspicion." It was only after the accused's response to the officer's request for "40 up" - which was a solicitation for cocaine - that the police were acting on something more than a mere suspicion. But the reasonable suspicion must be present before the officer offers the accused the opportunity to commit the offence, not after she offers him the opportunity to do so. Nor were the police acting on a bona fide investigation:

> It is not for the judiciary to direct the police how to conduct their operations. The judiciary is required, however, to determine whether the police conduct in a given case has overstepped the balance ... between the state's right to investigate and enforce the law, and the public's right to be left alone.

"It is not for the judiciary to direct the police how to conduct their operations. The judiciary is required, however, to determine whether the police conduct in a given case has overstepped the balance ... between the state's right to investigate and enforce the law, and the public's right to be left alone."

In considering that balance, what degree of comfort should the public take from the fact that the calls made are only to those numbers which make their way on to a police list? It is tempting to think that the numbers would not be on the list unless there was a reasonable suspicion that the numbers could be matched

> with an individual linked to the drug trade. But we know that is not so. The best that can be said is that the numbers are linked to individuals about whom there may be only a mere suspicion that they may be involved in the drug trade. As far as the undercover operator making the call is concerned, that suspicion arises solely from the fact that the telephone number is on the list. Thus, a form of circular reasoning, or bootstrapping governs the investigation whereby the results obtained are taken as justification for the means employed. ... [references omitted, paras. 38-39]

And further:

> I accept that dial-a-dope investigations present different problems in terms of detection and enforcement than the buy and bust investigations ... . I also agree with the trial judge that the police in this investigation were operating bona fides to the extent they were conducting their operations with the genuine goal of pursuing serious crime, namely the trafficking in hard drugs, without ulterior motives. I conclude, however, that in pursuing their goal, they overstepped the bounds of a bona fide police investigation ... by proceeding armed only with mere suspicion and the hope that their unknown targets will provide the "something more" which was a necessary precursor to the invitation to traffic in drugs. They pursued their investigative goals in circumstances where more information was, or could have been, available to them, but which they chose to disregard for reasons of expediency. [references omitted, para. 43]

Since the police did not have a reasonable suspicion the accused was engaged in trafficking drugs or were acting pursuant to a bona fide inquiry, the accused was entrapped and was entitled to a stay of proceedings. The accused's appeal was allowed, the convictions set aside, and a judicial stay of proceedings was entered.

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

NO 'SEARCH' IN UNDERCOVER DRUG BUY

R. v. Baldasaro, 2009 ONCA 676

Two Reverend Brothers were convicted of several counts of trafficking in marihuana in the Ontario Superior Court of Justice. They were sentenced to terms of imprisonment and forfeiture ordered of $2,100 in cash and the Assembly of the Church of the Universe, which professed marihuana to be sacramental. They appealed to the Ontario Court of Appeal arguing, among other grounds, that the police were obligated to obtain a search warrant before entering onto their property to purchase marihuana. "The undercover officers were expressly invited into the premises for the purpose of purchasing marihuana," said the Court in rejecting the appeal. "And it is settled law that undercover drug buys do not constitute a 'search' under section 8 of the *Charter*."

Complete case available at www.ontariocourts.on.ca

POST CONVICTION DNA COLLECTION INVOLVES REDUCED PRIVACY INTEREST

R. v. Morris, 2009 ABCA 303

The accused was arrested after police called a drug traffickers cell phone number and arranged to purchase crack cocaine. The accused attended the pre-arranged location on a bicycle and was found to be in possession of pre-packaged crack cocaine. He was also subject to a conditional sentence order that required him to, among other things, not possess a controlled substance or a cell phone. He plead guilty to possession for the purpose of trafficking and received two years in jail, but the judge refused to impose a DNA order. In the judge's view, taking bodily substances was the ultimate, or at least a very serious, intrusion into bodily integrity and ordering

one in this case was not in the best interests of the administration of justice.

A Crown Appeal to the Alberta Court of Appeal was successful. "The sentencing judge erred in law by holding that the collection of a DNA sample following a conviction is an affront to the security and personal integrity of an offender," said the Court. "In coming to this conclusion, the sentencing judge relied on cases that relate to the collection of bodily samples from an accused person rather than cases relating to post-conviction collection of DNA. Simply put, one's privacy interest post-conviction is reduced." Having applied the correct law on the issue of intrusion and considering the accused's criminal record and the nature of the underlying offence, the Appeal Court granted the DNA order.

Complete case available at www.albertacourts.ab.ca

REASONABLE NOTICE IN SERVING DRUG CERTIFICATE DEPENDS ON CIRCUMSTANCES

R. v. Yonis, 2009 ABCA 336

A police officer attended the accused's lawyer's office. The lawyer was not there, but the officer told the receptionist that he had certificates of analysis that were required to be served. The receptionist telephoned the lawyer and was overheard by the officer say the police wished to serve certificates of analysis on the accused. Counsel was overheard to tell the receptionist, "that's fine". Three certificates of analysis, that did not on their face reference the accused, were left with the receptionist. There was no written notice of intention to produce the certificates in evidence, but the officer said it was the Crown's intention to submit the certificates in evidence "next Thursday".

At trial in Alberta Provincial Court on cocaine trafficking charges the judge ruled that what the officer overheard in the telephone conversation between the receptionist and counsel was hearsay and could not used. He found the receptionist did not have authority to accept service of the certificates on behalf of the accused and the certificates were excluded. The Crown failed to prove, under s.51 of the *Controlled Drugs and Substances Act*, that it had served the accused with copies of the certificates together with reasonable prior notice of the Crown's intention to offer the certificates in evidence at trial. The accused was acquitted on three counts of cocaine trafficking.

The Crown appealed to the Alberta Court of Appeal arguing, in part, the service of the certificates upon the law office of the accused's counsel complied with s.51 and it was not dependent upon the consent of counsel to being so served. Further, the Crown submitted that the officer's evidence as to what he heard of the telephone conversation between counsel and the receptionist was admissible to establish the authority of the receptionist to accept service of the certificates on behalf of the accused.

What amounts to "reasonable notice" under s.51 will depend on the circumstances. "We do not doubt that compliance with section 51 of the Act can be achieved by effecting service upon defence counsel acting for an accused," said the Appeal Court. "It is reasonable to assume that counsel's retainer is wide enough to include service." The Court continued:

> There may be circumstances in which service of reasonable notice of intention, together with a copy of the certificate, may be made upon a law office. One such circumstance is with the lawyer's knowledge and consent. However, we do not wish to generalize as to the circumstances in which service on the law office is adequate, especially as case law indicates that notice of intention may sometimes be given orally. We think it would be the rare occasion when mere oral notice, and the delivery of certificates upon a receptionist, or other secretarial staff of a law office of an accused's lawyer, would suffice. On the other hand, the service of appropriate written notice, together with the copy of a certificate, upon the law office of defence counsel acting for an accused may be adequate in certain circumstances. [para. 12]

And Further:

> Section 51 requires that the party intending to rely on the certificates give reasonable notice of its intention to produce the certificates at trial, as well as providing copies of the certificates. Service of certificates with reasonable notice of intention has been the "bread and butter" activity of drug prosecutions in Alberta for decades. It is not difficult for the federal Crown to create, and use, an adequate and informative style of written notice of intention that incorporates the relevant certificates by reference, and then to effect service of the written notice and copies of the certificates either upon the accused personally, or upon defence counsel acting for the accused. This latter service can be effected either personally, or by service upon a person at his law office authorized to accept service of documents. [para. 14]

But in this case the Appeal Court upheld the trial judge's decision. "The oral advice to the receptionist given following the telephone conversation between her and the lawyer, merely that the certificates were intended to be submitted 'next Thursday,' falls short of reasonable notice of intention to produce the certificates at the [accused's] trial," said the Court. The Crown's Appeal was dismissed.

Complete case available at www.albertacourts.ab.ca

s. 51 Controlled Drugs & Substances Act

(1) Subject to this section, a certificate or report prepared by an analyst under subsection 45(2) is admissible in evidence in any prosecution for an offence under this Act or the regulations or any other Act of Parliament and, in the absence of evidence to the contrary, is proof of the statements set out in the certificate or report, without proof of the signature or official character of the person appearing to have signed it.

... ...

(3) Unless the court otherwise orders, no certificate or report shall be received in evidence under subsection (1) unless the party intending to produce it has, before its production at trial, given to the party against whom it is intended to be produced reasonable notice of that intention, together with a copy of the certificate or report.

NEW CRIMES AGAINST COPS ADDED TO CRIMINAL CODE

Effective October 2, 2009 two new provisions were added to the *Criminal Code* regarding assaults against peace officers. In addition to s.270 which makes it a dual offence with a maximum penalty of five years in prison to assault a "peace officer engaged in the execution of his duty or a person acting in aid of such an officer" or to assault "a person with intent to resist or prevent the lawful arrest or detention of himself or another person," the offences of assaulting a peace officer with a weapon or causing bodily harm and aggravated assault against a peace officer are now in effect.

Assaulting peace officer with weapon or causing bodily harm

Under s.270.01 there is now a new offence for assaulting a peace officer with a weapon or causing bodily harm. It reads:

> s.270.01 (1) Everyone commits an offence who, in committing an assault referred to in section 270,
> (a) carries, uses or threatens to use a weapon or an imitation of one; or
> (b) causes bodily harm to the complainant.
> Punishment
> (2) Everyone who commits an offence under subsection (1) is guilty of
> (a) an indictable offence and liable to imprisonment for a term of not more than 10 years; or
> (b) an offence punishable on summary conviction and liable to imprisonment for a term of not more than 18 months.

Aggravated assault of peace officer

As well, s.270.02 also creates the offence of aggravated assault against a peace officer:

> s.270.02 Everyone who, in committing an assault referred to in section 270, wounds, maims, disfigures or endangers the life of the complainant is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.

But note the punishments themselves are no greater than for similar assaults against non peace officers (see ss. 267 and 268 of the *Criminal Code*).

JUSTICE INSTITUTE of BRITISH COLUMBIA

Police Academy

Advanced Programs
SPECIAL PRESENTATION

Asset Forfeiture - Offence Related Property and Civil Forfeiture

Date: Monday, November 16, 2009
Time: 10 am to 12 noon
Location: Shadbolt Centre for the Arts – Studio 102
6450 Deer Lake Avenue, Bby

Session Overview

The Provincial Civil Forfeiture Office and the Vancouver Police Department are presenting a two hour training session for police executives and senior police managers on the forfeiture of criminally tainted assets.

Rob Kroeker, Executive Director of the BC Civil Forfeiture Office will present a session on British Columbia's *Civil Forfeiture Act*.

Inspector Brad Desmarais, of the Vancouver Police Department, Gangs and Drugs section will present a session on criminal forfeiture, focusing on the use of offence related property provisions in section 490 of the *Criminal Code*.

Participants will develop a working knowledge of criminal and civil forfeiture law from a management perspective. The session will speak to the resource draw associated to pursuing either criminal or civil forfeiture, Crown and CFO requirements for asset forfeiture cases, recommended organizational protocols for file referrals, information sharing, and expected outcomes. Drug, gang, proceeds, fraud, securities and financial crime section managers will find these sessions of particular interest.

Who Should Attend? This session will be of interest to senior police officials (inspector and above) responsible for the investigation of files involving property suspected of being obtained through crime in any form, or responsible for organizational strategies in response to gang, drug and financially motivated crimes.

Cost: This session is sponsored by the Civil Forfeiture Office. Registration is free to police or other sworn law enforcement officers serving in British Columbia. Members and member organizations are responsible for any travel, accommodation or other costs associated with attending.

Registration:
Email: Karen Albrecht at **advancedpolicetraining@jibc.ca**

Coffee and muffins will be served at 9:30am.

The **Fraser Valley Criminal Justice Conference** will be held at the **Ramada Plaza and Conference Centre** in Abbotsford, British Columbia from **April 27-30, 2010**. The 2010 Conference Topic is **"Youth, Communities and the Criminal Justice System."** Speakers will include Supt. Dan Malo, Andrée Cazabon, Dr. Irwin Cohen, Dr. Matt Logan, Crystal Meth Society, Glen Flett, Dr. Lohrasbe, Sgt. Chris Thompson, Rosalind Currie, D/Chief Rick Lucy, Diane Sowden, Dr. Ray Corrado, Mary Ellen O'Toole, Det. Judy Dizy, Det. Chris Eeg, Gil Johnston, and Victor Porter. For more information visit:

www.fvcjc.ca

SUBJECTIVE BELIEF FOR ARREST CAN BE INFERRED FROM EVIDENCE

R. v. Dill, 2009 ABCA 332

Following his arrest for possessing a stolen licence plate, the accused was searched and methamphetamine was found in his jacket pocket. At trial in Alberta Provincial Court the accused was acquitted of possessing the stolen licence plate but he was convicted of possessing methamphetamine for the purpose of trafficking. Although he was acquitted on the licence plate possession charge, the trial judge nonetheless found reasonable grounds existed for the arrest and the search that followed was incident to arrest.

> "In considering whether reasonable and probable grounds existed, the trial judge was entitled to consider the totality of the evidence, including the fact that there was more than one police officer involved in the decision to pursue, stop and arrest the [accused]."

The accused appealed his conviction to the Alberta Court of Appeal arguing, in part, that the trial judge erred in finding a breach of s.8 of the *Charter* (search and seizure). He submitted that the trial judge, among other things, misapplied the test for reasonable grounds, drew unreasonable inferences from the evidence, failed to appreciate relevant evidence, and considered circumstances unknown to the arresting officer. In his view, the trial judge considered an amalgam of evidence from different officers, some of which was conflicting, in considering whether there were reasonable and probable grounds for his arrest. As well, he asserted that the trial judge should only have considered what the arresting officer knew and believed at the time of the arrest. Further, he said the trial judge erred in finding

a subjective basis for the arrest in the absence of evidence from the arresting officer that he believed the accused was in possession of a stolen license plate and in finding an objective basis for the arrest by considering circumstances that were not known to the arresting officer.

Justice Costigan, delivering the judgment on behalf of the Court, rejected the accused's arguments. The standard of judicial review relating to reasonable grounds is clear:

- a trial judge's factual findings are entitled to deference; and

- the application of a legal standard to the facts is a question of law (reviewable on the correctness standard).

In finding the trial judge did not err, the Appeal Court stated:

> ... In considering whether reasonable and probable grounds existed, the trial judge was entitled to consider the totality of the evidence, including the fact that there was more than one police officer involved in the decision to pursue, stop and arrest the [accused]. The fact that there may have been inconsistencies in the evidence of the police officers as to what they observed at the time of arrest might have an impact on whether a reasonable doubt exists but it does not detract from the reasonable and probable grounds of the officers at the scene. The reason for the arrest is obvious on this record.
>
> In these circumstances, it was not a reviewable error for the trial judge to infer that the arresting officer subjectively believed that the [accused] had committed an offence. Nor was it an error for her to find that the evidence supplied an objective basis for that belief. Once the arrest was made, [the officer] was justified in conducting a search incidental to the arrest. ... [paras. 6-7]

There was no breach of s. 8 of the *Charter* and the accused's appeal was dismissed.

Complete case available at www.albertacourts.ab.ca

'FINDS COMMITTING' MEANS 'APPARENTLY FINDS COMMITTING'

R. v. S.T.P., 2009 NSCA 86

Two officers were on patrol as part of a response to violent incidents, including fire bombings, that had taken place in the area. They were instructed to show a police presence in the community and generally get to know the people of the area. They saw a vehicle being driven with three young males in it. The accused was in the back seat of a car, appeared to take notice of them and quickly turn around. The vehicle then turned off the street, at the first opportunity, into a fast food outlet. The vehicle's licence plate was checked and determined that on two occasions it had been associated with bail violations, once about two and a half months earlier and again two days before, including a reference to "trafficking cannabis". This computer check simply meant that the vehicle had in some way be connected to such violations, but did not determine whether any individual in the car or even the owner had been associated in any way with a bail violation.

The officers entered the parking lot and parked behind the car which was still occupied. They approached the car and could detect the smell of burned marijuana coming from it. The youths were arrested and, incidental to their arrest, were searched. No marijuana was found in the vehicle and the youths denied smoking any that evening. But police found cocaine in the accused's pockets. He was charged with possessing cocaine for the purpose of trafficking.

At trial in Nova Scotia Provincial Court the accused made a *Charter* application to exclude the cocaine. The trial judge, however, found the arrest lawful. The circumstances of the encounter, including the smell of marihuana, justified the arrest. As a result, the search that followed was incidental to a lawful arrest and there was no *Charter* violation. The accused was convicted for the drug offence.

The accused appealed to the Nova Scotia Court of Appeal arguing the police had insufficient grounds to arrest him because the smell of burnt marijuana was indicative of no more than possession at some time in the past. Thus, the arrest was unlawful as was the search that flowed from the arrest.

"[C]ourts ... have consistently interpreted the reference to "finds committing" in s. 495(1) (b) to mean apparently finds committing."

Chief Justice MacDonald, authoring the opinion of the Appeal Court, first considered a peace officers power of arrest under s.495(1) of the *Criminal Code*. Although the offence of possessing marihuana is a dual offence, it is strictly summary if the amount involved is less than 30 grams. In deciding whether the arrest in this case was lawful, the Court assumed, without deciding, that the police would need to find the accused committing the offence (possession of marihuana) if the arrest was to be lawful. Section 495(1)(b) reads:

> A peace officer may arrest without warrant ... (b) a person whom he finds committing a criminal offence ... .

In discussing how this arrest provision applied to the case at hand, Chief Justice MacDonald stated:

> At first blush, this may appear to be a challenge considering the fact that no marijuana was ever found. However that does not end the matter. It was still open to the judge to conclude that s. 495(1)(b) had been complied with in these circumstances. I say this because courts in this country have consistently interpreted the reference to "finds committing" in s. 495(1)(b) to mean apparently finds committing. ... [para. 18]

After reviewing several case authorities, the Court concluded:

> [I]n my view an arresting officer must establish three things in order to meet the finds committing standard. Firstly, the police officer's knowledge must be contemporaneous to the event. Thus he or she must be present while the apparent offence is taking place. In other words, unlike the reasonable and probable grounds standard, it is not enough to believe that an offence has taken place in the past or is about to take place.
>
> Secondly, the officer must actually observe or detect the commission of the offence. Most often this is achieved by actually seeing and/or hearing the offence being committed. However, I would not limit it to those two senses. In fact, as in this case, the sense of smell may suffice. ...
>
> Thirdly, there must be an objective basis for the officer's conclusion that an offence is being committed. In other words, ... "it must be 'apparent' to a reasonable person placed in the circumstances of the arresting officer at the time". [references omitted, paras. 20-22]

Although the Court agreed that the smell of burnt marihuana alone may not justify an arrest, the trial judge relied on more than that fact in finding the arrest lawful - "many more factors coalesced to justify the arrest." In looking at the whole picture as it presented itself to the police the Court concluded:

> [C]onsider this context. The officers see three young men in a vehicle and one of them appears nervous upon seeing the police vehicle. Their car then immediately turns off the road into the McDonald's parking lot. Then a computer check of the vehicle reveals "bail violations" including references to "cannabis". This would have given the officers strong reason to believe that something illicit was occurring. Then upon smelling burnt marijuana, it became apparent that the illicit activity involved the possession of marijuana. At that point, the test for a summary conviction arrest was met. Specifically, applying the three criteria noted above: (a) the officer was present when the apparent offence was taking place, (b) he detected the smell of burnt marijuana, and (c) the commission of this offence would have been "'apparent' to a reasonable person placed in the circumstances of the arresting officer at the time".

The arrest was lawful and the accused's appeal was dismissed.

Complete case available at www.canlii.org

WARRANTLESS SEARCHES INCIDENTAL TO ARREST DO NOT DEPEND ON EXIGENCIES

R. v. Tontarelli, 2009 NBCA 52

Two police officers wearing plain clothes attended a large convenience store, restaurant and gas station to meet a source. While waiting in the parking lot a GMC Jimmy drove slowly by with the driver checking one of the officers out and making eye contact. After parking the Jimmy nearby, the driver remained seated behind the wheel. The driver appeared "nervous" as he scanned the parking lot, seemingly looking for someone or something. After about 10 minutes the officers left the area and returned some 15 minutes later. The officers noted the Jimmy had been moved - it was now backed into a spot and afforded its driver an unobstructed view of the area ahead. Within a few minutes a Pontiac G6 arrived. It was confirmed to be a rental vehicle and was driven by the accused who was the sole occupant. He walked to the Jimmy and entered its passenger compartment.

> "'[E]xigent circumstances' are not required for the lawful exercise of the common law power of search incident to lawful arrest where ... the place to be searched is a motor vehicle on a public highway and the person arrested is the driver."

The two men in the Jimmy engaged in a conversation which lasted 15-20 minutes. It ended with a handshake, followed by the accused's exit with a black duffle bag and a smaller bag, which he immediately placed in the trunk of his car. The accused entered the convenience store and was seen exit with two other men. They entered the G6 but now a different man, not the accused, was driving. Believing there had been a drug transaction, the police pulled over both vehicles after they left the parking lot. The drivers of both vehicles were arrested and the vehicles searched. The police opened the G6's trunk, finding 20 individually wrapped bundles of marihuana in the black duffle bag. Each bundle weighed about one-half pound, for a total of approximately 10 pounds, were seized from the black duffle bag. No controlled drug or substance was found in the other smaller bag. From the Jimmy police seized $16,000 in cash and a small amount of marihuana.

At trial in New Brunswick Provincial Court police testified that they believed a drug transaction had taken place in the parking lot based on experience and the "totality of the circumstances". The vehicle was then searched as an incident to the arrest of the G6 driver. In the officer's mind the law permitted a warrantless search, even where there were no exigent circumstances, for the purposes of (1) police safety and (2) the need to secure evidence pertaining to the suspected drug transaction. The trial judge found the arrest of the G6 driver was lawful and the search that followed was incidental to arrest. Even though there were no safety issues because the arrestees were well secured, the police were gathering evidence of illegal possession of drugs. The marihuana seized from the G6 was admissible in evidence and the accused was found guilty of trafficking in marihuana. He was sentenced to 28 months in jail, a DNA sample was ordered, and a firearms prohibition was imposed.

The accused appealed to the New Brunswick Court of Appeal arguing, in part, that the warrantless search of the car was not authorized at law. In his view, the lack of exigent circumstances rendered the warrantless search unreasonable under s.8 of the *Charter*. In other words, he suggested that the common law power to search a vehicle incident to the driver's arrest could only be lawfully exercised under exigent circumstances.

Exigent Circumstances

Chief Justice Drapeau, writing the unanimous judgment, found the lawful exercise of that common law power was not conditional upon the existence of exigent circumstances - circumstances indicative of "an imminent danger of the loss, removal,

destruction or disappearance of the evidence if the search or seizure is delayed" - making it impracticable for the police to obtain a warrant. "'[E]xigent circumstances' are not required for the lawful exercise of the common law power of search incident to lawful arrest where, as here, the place to be searched is a motor vehicle on a public highway and the person arrested is the driver," said Chief Justice Drapeau.

Although, as a general rule, warrantless searches are presumptively unreasonable for s.8 purposes, the burden of establishing the reasonableness of any warrantless search can be discharged by the Crown if:

(1) the law authorized the search;

(2) the authorizing law was itself reasonable; and

(3) the search was executed in a reasonable manner.

The common law power of search incident to arrest, however, is a well-established exception to the ordinary requirements for a reasonable search because it requires neither a warrant nor independent reasonable and probable grounds. "In my view ... exigent circumstances are not a prerequisite to the lawful exercise of the common law power of search incident to arrest in circumstances such as those revealed by the present record," said Chief Justice Drapeau.

Application of s.11(7) CDSA

Section 11(7) of the *Controlled Drugs and Substances Act*, as noted by the Court, did not diminish the scope of the common law power to search on arrest. The Court stated:

> Section 11(7) allows a peace officer to exercise, without a warrant, the search power described in s. 11(1) if two prerequisites are met: (1) the conditions for obtaining a warrant exist; and (2) exigent circumstances make it impracticable to obtain one. Section 11(1) provides for the issuance of a warrant authorizing the search of a "place" for a controlled substance and its seizure

s.11 Controlled Drugs & Substances Act

(1) A justice who, on ex parte application, is satisfied by information on oath that there are reasonable grounds to believe that

(a) a controlled substance or precursor in respect of which this Act has been contravened,

(b) any thing in which a controlled substance or precursor referred to in paragraph (a) is contained or concealed,

(c) offence-related property, or

(d) any thing that will afford evidence in respect of an offence under this Act or an offence, in whole or in part in relation to a contravention of this Act, under section 354 or 462.31 of the Criminal Code

is in a place may, at any time, issue a warrant authorizing a peace officer, at any time, to search the place for any such controlled substance, precursor, property or thing and to seize it.

... ...

(5) Where a peace officer who executes a warrant issued under subsection (1) has reasonable grounds to believe that any person found in the place set out in the warrant has on their person any controlled substance, precursor, property or thing set out in the warrant, the peace officer may search the person for the controlled substance, precursor, property or thing and seize it.

(6) A peace officer who executes a warrant issued under subsection (1) may seize, in addition to the things mentioned in the warrant,

(a) any controlled substance or precursor in respect of which the peace officer believes on reasonable grounds that this Act has been contravened;

(b) any thing that the peace officer believes on reasonable grounds to contain or conceal a controlled substance or precursor referred to in paragraph (a);

(c) any thing that the peace officer believes on reasonable grounds is offence-related property; or

(d) any thing that the peace officer believes on reasonable grounds will afford evidence in respect of an offence under this Act.

Where warrant not necessary

(7) A peace officer may exercise any of the powers described in subsection (1), (5) or (6) without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would be impracticable to obtain one.

where a justice is satisfied by information on oath that there are "reasonable grounds" to believe any such substance is in that place. As is well known, a "place" includes a motor vehicle and "reasonable grounds" means "reasonable and probable grounds".

From a purely textual standpoint, s. 11(7) is broad enough to cover searches incident to arrest. However, the modern approach to statutory interpretation enjoins courts to consider Parliament's words in the light provided by the context within which they are used ... That exercise leads me to conclude that s. 11(7) has no application to searches of motor vehicles conducted in the lawful exercise of the common law power of search incident to the driver's arrest.

I begin by underscoring the CDSA's silence on the subject of the common law power of search incident to arrest. This state of affairs is particularly revelatory of Parliament's intention when one bears in mind both the power's longstanding acceptance by the courts, and the direction in s. 13(3) of the CDSA that once a controlled substance is seized "pursuant to a power of seizure at common law", the CDSA and its regulations apply in respect of that substance. Section 13(3) would be superfluous if the common law power of search incident to arrest was subsumed under s. 11(7).

As well, and from a broader perspective, it bears remembering that s. 11(7) is part of a search and seizure scheme which, as a matter of law and proven fact, requires reasonable and probable grounds to believe that a controlled substance will be found in the place to be searched. A search incident to arrest does not fit within that scheme because it may be lawfully performed in the absence of such grounds. ... [references omitted, paras. 45-48]

> "[W]here the evidence establishes a reasonable basis to search the trunk for evidence referable to the offence of arrest, there is no compelling reason to exclude that vehicular compartment, whether open or closed, from the spatial scope of the power of search incident to arrest."

In this case, the common law power of search incident to arrest did not offend s.8 of the *Charter* if (1) the G6 driver's arrest was lawful; (2) the search was truly incidental to his arrest; and (3) the search was effectuated in a reasonable manner. In searching the trunk and duffle bag the police were acting for a purpose directly related to the driver's arrest. As for the scope of the power as it relates to vehicles Justice Drapeau held:

> [M]y view is that, where the evidence establishes a reasonable basis to search the trunk for evidence referable to the offence of arrest, there is no compelling reason to exclude that vehicular compartment, whether open or closed, from the spatial scope of the power of search incident to arrest ... To hold otherwise would be illogical once it is accepted that: (1) the power in question extends to the arrestee's "immediate surroundings" ... which covers his or her motor vehicle ...; and (2) the search's legitimate objectives include the discovery and seizure of incriminating evidence referable to the offence of arrest ... Thus, I reject the American approach, which, in its most recent formulation, restricts to the passenger compartment the power of vehicle searches incident to an occupant's arrest ... [references omitted, para. 51]

> "The objective component of the test is satisfied if ... a reasonable person, standing in the arresting officer's shoes, would have believed there were reasonable and probable grounds to make the arrest."

Reasonable Grounds For Arrest

And finally, the Court ruled that the police had reasonable and probable grounds for the arrest. In order for the driver's arrest to be lawful the officer:

> ... had to subjectively believe on the basis of objectively sufficient grounds that [the driver] had committed an indictable offence for which

> he could be arrested without a warrant. The objective component of the test is satisfied if, as the trial judge recognized, a reasonable person, standing in the arresting officer's shoes, would have believed there were reasonable and probable grounds to make the arrest.
>
> It is absolutely clear that ... the arresting officer ... was entitled to rely on the information provided by [other officers] in forming his own belief, on reasonable and probable grounds, that [the driver] had committed an arrestable indictable offence. The applicable standard is not proof beyond reasonable doubt. All the law requires is this: the officers must believe the arrestee has committed an indictable offence for which he or she can be arrested without warrant and this belief must be founded upon information giving rise, on an objective basis, to a "credibly based probability" that such an offence was indeed committed ... [references omitted, paras. 52-53]

In this case, the trial judge found the arresting officer subjectively believed in the existence of reasonable grounds and those grounds were objectively discernible. The facts, taken together, met the legal standard of reasonable and probable grounds. Even though "none of the tidbits of supporting information ... carried stand-alone probative value [,] courts must look to the totality of the pertinent circumstances to determine whether the arresting officer had the requisite reasonable and probable grounds to effect the warrantless arrest at issue."

"In my view, the cumulative effect of the individual pieces of supporting data, viewed contextually, commonsensically, and in light of [the arresting officer's] significant training and experience in investigations under the CDSA, is sufficiently compelling for this Court to agree with the trial judge's conclusion that the G6 driver's arrest was carried out with the requisite reasonable and probable grounds," said Chief Justice Drapeau. "In my respectful judgment, it follows from the foregoing that there was also a reasonable basis for [the arresting officer's] search of the G6's trunk and the duffle bag."

Complete case available at www.canlii.org

BELIEF SKITTLES CONTAINER MAY CONTAIN WEAPON REASONABLE

R. v. Abdo, 2009 ABCA 340

At about 2:45 am, two police officers stopped a car driven by the accused because it was swerving and speeding and they believed the diver might be impaired. When they looked in the car, they saw a sword resting on the floor, with the handle tucked between the console and the front passenger seat, within arm's reach of the accused. He was was ordered out of the car and arrested for possession of a weapon. He was asked to place his hands on the car for a pat down search because of a concern for officer safety. The accused did not comply and appeared to be attempting to hide something. The searching officer thought the accused might have a weapon. He felt a hard object in the accused's genital area and removed a Skittles container from his pants. The searching officer thought the Skittles container might enclose a weapon so he opened it and discovered 17 pieces of cocaine. The accused was arrested for possession of a controlled substance.

At trial in the Alberta Court of Queen's Bench the accused argued his *Charter* rights under ss. 8 and 9 had been breached. The trial judge held that the initial detention was lawful because the officers had reasonable cause to suspect that the accused was impaired. She found that reasonable grounds for arrest for the weapons offence were established on both a subjective and objective basis because the accused was driving at 2:45 am with swords within arm's reach. There was a valid purpose for the pat down search incidental to arrest because the accused had been arrested for a weapons offence and there was a reasonable concern for officer safety. She found that the officers had a subjective belief that the hard object might be a weapon and, once retrieved, that the Skittles container might hold drugs, drug paraphernalia or a weapon and there was an objective basis for those beliefs. Therefore, there were no *Charter* breaches and the accused was convicted of possessing cocaine for the purpose of

trafficking and possessing a weapon for a dangerous purpose.

The accused then appealed his convictions to the Alberta Court of Appeal. Justice Costigan, delivering the judgment for the Appeal Court, first noted that the standards of review for issues relating to reasonable and probable grounds are well settled:

- A trial judge's factual findings are entitled to deference; and
- the application of a legal standard to the facts is a question of law reviewable on the correctness standard.

In this case, the Appeal Court was not satisfied that the trial judge did not err:

> The trial judge correctly articulated the relevant legal tests and the facts she found were sufficient, at law, to support her conclusion that those tests were met. The evidence supports the trial judge's conclusion that the officers had reasonable and probable grounds to arrest the [accused] for possession of a weapon for a dangerous purpose after they detained him in the early morning hours and observed the location of the swords. The fact that there might be innocent reasons why the [accused] had the swords in the car could have an impact on whether a reasonable doubt exists but it does not detract from the reasonable and probable grounds of the police officers at the scene.

"The fact that there might be innocent reasons why the [accused] had the swords in the car could have an impact on whether a reasonable doubt exists but it does not detract from the reasonable and probable grounds of the police officers at the scene."

> The evidence also supports the trial judge's conclusion that the search of the [accused's] person was reasonable given the arrest for a weapons offence and the concern for officer safety. Moreover, the evidence supports her conclusion that it was reasonable to extend the search to the contents of the Skittles container given the officers' belief that it might enclose a weapon. [paras. 7-8]

The accused's appeal was dismissed.

Complete case available at www.albertacourts.ab.ca

See page 20