JIBC

IN SERVICE: 10-8

A PEER READ PUBLICATION

A newsletter devoted to operational police officers in Canada.

BC Law Enforcement Memorial
Sunday, September 28, 2014 at 1:00 pm
Rotary Stadium, Abbotsford, British Columbia
Muster at 11:30 am, Thunderbird Memorial Square, Veterans Way

Highlights In This Issue

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Unless otherwise noted all articles are authored by Mike Novakowski, MA, LLM. 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 subscribe at: **www.10-8.ca**

Upcoming Events

Human Source Management

This course will equip participants with the basic skills required and the best practices to follow associated with the recruitment and handling of informants and agents. It includes preparation of judicial authorizations utilizing informant / agent information, policy and how to effectively report on information derived from these assets.

June 23-26, 2014 (Victoria)

September 16-19, 2014

JIBC Police Academy Advanced Training

www.jibc.ca/course/POLADV715

BCACP/CACP
2015 Police Leadership Conference
April 12-14, 2015
"Leading with Vision and Values"

This is Canada's largest police leadership conference providing an opportunity for delegates to hear leadership topics discussed by world-renowned speakers. Click here

New JIBC Bachelor of Law Enforcement Studies

see pages 30-31

Graduate Certificates

Intelligence Analysis

or

Tactical Criminal Analysis

www.jibc.ca

see page 32

JUSTICE INSTITUTE of BRITISH COLUMBIA LIBRARY

WHAT'S NEW FOR POLICE IN THE LIBRARY

The Justice Institute of British Columbia Library is an excellent resource for learning. Here is a list of its most recent acquisitions which may be of interest to police.

The active reader: strategies for academic reading and writing.

Eric Henderson.

Don Mills, ON: OUP Canada, 2011, c2012.

PE 1408 H385 2012

Aggression [videorecording].

VEA

Burnaby, BC: Distribution Access [distributor], c2013.

1 videodisc (22 min.) : sd., col. ; 4 3/4 in. (DVD)

Are all people capable of murder? What drives people to violence? Can TV affect our actions and even influence us to acts of violence? This interview-led documentary style program examines aggressive media, aggressive behaviour and the banality of evil with the support of original film footage of research and actual crimes. This program features research psychologists providing explanations and reasoning behind aggression.

BF 575 A3 A34 2013 D1841

Doing qualitative research.

David Silverman.

London, UK; Thousand Oaks, CA; New Delhi; Singapore: SAGE Publications Ltd, c2013.

H 62 S472 2013

E-tivities: the key to active online learning.

Gilly Salmon.

New York, NY: Routledge, Taylor & Francis Group, c2013.

LB 1044.87 S25 2013

Exploring digital libraries: foundations, practice, prospects.

Karen Calhoun.

London, UK: Facet Publishing, c2014.

ZA 4080 C35 2014

Getting control of yourself: anger management tools & techniques.

with Christian Conte, Ph.D.

Mill Valley CA: Psychotherapy.net, c2012.

1 videodisc (75 minutes); 4 3/4 in. (DVD) + 1 instructor's manual (52 pages ; 18 cm)

Instructor's manual by Katie Read, MFT.

RC 569.5 A53 G47 2012 D1838

HBR guide to persuasive presentations.

Nancy Duarte.

Boston, MA: Harvard Business Review Press, c2012.

HF 5718.22 D817 2012

The little book of stress relief.

David Posen.

Buffalo, NY: Firefly Books, c2012.

RA 785 P67 2012

Managing business ethics: straight talk about how to do it right.

Linda Klebe Treviño, Katherine A. Nelson.

New York, NY: John Wiley, c2011.

HF 5387 T734 2011

Mediating employment disputes.

Barry Kuretzky, Jennifer MacKenzie.

Toronto, ON: Canada Law Book, c2013.

KE 3206 K87 2013

Successful writing at work.

Philip C. Kolin.

Boston, MA: Cengage Learning, c2013.

PE 1408 K694 2013

Teaching in blended learning environments: creating and sustaining communities of inquiry.

Norman D. Vaughan, Martha Cleveland-Innes, and D. Randy Garrison.

Edmonton, AB: AU Press, c2013.

LB 2395.7 V39 2013

DETENTION JUSTIFIED: CLEAR NEXUS BETWEEN DETAINEE & CRIME

R. v. Witvoet, 2014 ABCA 77

Following the theft of a cube van, its owner and his employee were able to locate it by following its tire tracks in the newly fallen snow. They called police with its location. A police dog followed a set of fresh footprints in the snow for 12 minutes. The track went from the van to a house. They saw a woman stick her head out the side door of the house and, after noticing police, she quickly popped back in again. Suspicious, the two officers approached the house and spoke to a man (Witvoet) and the woman (Davis). They asked them who they were, whether they lived there and whether they owned the home. Receiving no response, the officers became more suspicious. After being told they were detained for the stolen vehicle, the man started to flee down the stairs of the house followed by the woman. When threatened with the police dog, Witvoet came out of the house.

"City Police, stop right there, I'm sending in the dog"

Concerned that this might be a fresh break and enter or possibly an interrupted home invasion – as there had been about 20 in the city over the last three months – one of the officers followed Davis down the stairs as she disappeared from sight. At the bottom of the stairs the officer saw the woman try to close a door to a room. He asked her who was in the room and she responded, "No one." When the officer went into the room he saw another man hiding in a closet with two shotguns within easy reach, along with numerous other weapons and ammunition. After back up arrived the man in the basement was taken into custody. A search warrant for the house was subsequently obtained and over 100 stolen items and numerous weapons were seized. Both accused Witvoet and Davis lived in the basement suite. The other man did not.

Alberta Provincial Court

Both accused argued, among other things, that their ss. 8 and 9 *Charter* rights had been breached. They sought the exclusion of evidence seized by police under s. 24 (2). The judge ruled that the police had reasonable grounds to suspect the two were criminally implicated in the stolen vehicle investigation. Thus, they had not been arbitrarily detained under s.9:

> Given the fact that police had tracked a set of footprints in the freshly fallen snow, directly from a stolen vehicle to the door of the residence of the accused, it is the Court's conclusion that at that point the officer had authority to detain the accused Davis for investigative purposes at the threshold of the residence. The police also had the power to detain for investigative purposes, the accused Witvoet at the door to the residence. At this juncture both officers were lawfully investigating the criminal offence of theft of a motor vehicle and they had properly tracked footprints from the stolen vehicle directly to the door of the residence. The officers were entitled to detain the accused Davis and Witvoet at the threshold of their residence for investigative purposes. [see 2012 ABPC 125, at para. 20]

The judge did, however, conclude that the warrantless entry into the house infringed s. 8. The belief that a home invasion was in progress was unreasonable and merely a hunch. There was no evidentiary foundation to support the concern of a potential home invasion in progress nor a break and enter. When the information obtained from the warrantless entry was then excised from the ITO, the judge held there were no reasonable grounds to support the search warrant. She did, however, admit the evidence under s. 24(2). The police acted in good faith despite acting on a hunch. Convictions of unauthorized possession of two shotguns, careless storage, possession of a weapon obtained by crime and seven counts of possession of stolen property followed. Davis was also convicted on two counts of possessing a weapon contrary to an order.

Alberta Court of Appeal

The accused appealed their convictions arguing, in part, that the judge erred in not finding a s. 9 *Charter* breach and by not excluding the evidence under s. 24(2).

Detention

The Court of Appeal concluded that the trial judge did not err in determining that s. 9 was not breached. "[T]here was a clear nexus between the investigative detention of the [accused] and the recent criminal activity, namely, the theft of the cube van and the set of footprints clearly leading from the stolen vehicle, now abandoned, to the residence where the [accused's] were living," said the Appeal Court.

s. 24(2) *Charter*

The accused submitted that the police were not acting in good faith because the trial judge found their belief that a home invasion was in progress unreasonable and supported merely by a hunch. But the Court of Appeal disagreed. Although the trial judge found that the officers' belief in a home invasion was not reasonable, she did not find the concern about a home invasion was simply a pretext for entering the house. "What the trial judge described as a hunch arose in circumstances where clearly the van had been stolen by someone in the house, the two people in the house refused to respond to innocuous questions, and they moved away from the peace officers after being advised they were being detained for the theft of the van," said the Appeal Court. "Even if the precise nature of the peace officers' concerns were not well founded, their suspicions were reasonable in those circumstances, and sufficient to support the trial judge's conclusion that they acted in good faith." Other 24(2) submissions were rejected. The Court of Appeal concluded that the trial judge did not improperly apply the principles or rules regarding a s. 24(2) admissibility analysis nor did she make unreasonable findings. She was owed deference and the appeals were dismissed.

Complete case available at www.albertacourts.ab.ca

SEARCH OF TRUNK LAWFUL: ODOUR + OTHER FACTORS = REASONABLE GROUNDS

R. v. Valentine, 2014 ONCA 147

After being stopped for speeding at 10:20 pm, the accused appeared to be inordinately nervous as the officer obtained his driver's licence, registration and insurance. A CPIC check revealed he was on bail for assault and uttering threats, and had a curfew which prohibited him from being outside his residence between 10 pm and 5 am. CPIC also flagged him for violence and as an escape risk. When officers approached him and said he was under arrest for breaching his bail, the accused became uncooperative and refused to get out of the car. He was physically removed, arrested and frisked. Police located a cellphone and then placed the accused in the back of the police car. The officer, unsure if he was going to release the accused at the scene, decided to search the car. He was worried there might be weapons in it that the accused could access if he was released.

When the officer put his head in the car to begin his search he smelled a strong odour of marihuana. He also saw a second cellphone and a large amount of cash in a jacket that was lying across the passenger seat. The officer, believing the accused possessed marihuana, returned to his police car and arrested him for possession. The officer then searched the accused's vehicle incidental to the marihuana possession arrest. A large partially-open duffle bag containing nine vaccuum-sealed cylinders holding 18 pounds of marihuana was found in the trunk. The officer could smell marihuana coming from the cylinders and noted the duffle bag also gave off the heavy smell of marihuana. The car was towed to the police station where it was examined by two other officers, both smelling a strong odour of marihuana coming from it.

Ontario Court of Justice

The accused challenged the whether the the search was reasonable under s. 8 of the *Charter* by arguing that the officer could not have smelled marihuana when

he conducted his safety search in the front of the car. The accused said he vacuum-sealed the marihuana in plastic and placed it in a water-resistant duffle bag to mask its smell. As well, he said he would periodically open the car window to circulate the air and conduct smell tests to ensure the marihuana was not giving off any noticeable odour. The accused also called an expert who testified about the olfactory ability of humans, the odour containment properties of packaging and the smell characteristics of raw marihuana. After conducting his own tests, the expert opined that the officers' evidence that they could smell raw marihuana in the car was simply not credible.

Using a progressive analysis of the police interaction with the accused, the judge concluded that the police stayed within their authority as the situation developed. The judge first ruled that the officer had the authority to stop the accused under both the common law and Ontario's *Highway Traffic Act* to obtain relevant documents, such as a driver's licence, and to perform the CPIC search. The CPIC information then provided reasonable grounds, both subjective and objective, for the breach of recognizance arrest. The search of the area proximate to the driver's seat was proper as a search incident to the arrest on the breach charge because the officer was considering releasing the accused and he was concerned that, if he did so, police safety could be in jeopardy if there were weapons in the area around the driver's seat. The possession arrest was also lawful because the officer smelled raw marihuana and discovered another cell phone and a large amount of cash. The search of the entire car incident to the possession charge, which led to the discovery of the large quantity of marihuana, was also a valid search. There were no *Charter* breaches and, even if there were, the evidence was admissible under s. 24(2). The accused was convicted of possessing marihuana for the purpose of trafficking.

Ontario Court of Appeal

The accused argued that his s. 8 *Charter* right was infringed and that the evidence ought to have been excluded under s. 24(2).

Arrest - Breach of Recognizance

The accused suggested that the arrest for the curfew breach was not based on reasonable grounds because the officer knew the accused had an employment exception to his curfew. CPIC indicated such and the accused said he told the officer that he had a letter from his employer giving him permission to be outside of his home at that time. Justice Epstein, however, disagreed. The officer had subjectively believed the accused was in breach - he was stopped out past his curfew - and his grounds were objectively reasonable. The officer only had the accused's assurance he was allowed to be out at night:

> It is true that there was an employment exception and the evidence demonstrates that [the arresting officer] became aware of it, at least through his exchange with CPIC. However, on its own, the officer's knowing about the employment exception does not necessarily lead to the conclusion that his belief that the [accused] was in breach of his recognizance was unreasonable. Determining whether the employment exception operated at that particular time and in those particular circumstances depended on obtaining additional information about the circumstances in which the [accused] was driving along Highway 401 late at night and then assessing the validity of that information.
>
> ... It was late at night. The [accused] had serious criminal antecedents, was on bail for serious offences and was exhibiting threatening behaviour. In my view in these circumstances the officer is not required to investigate and try to rule out all possible explanations for the [accused's] being out past his curfew before making an arrest. [paras. 39-40]

Safety Search - Front of the Car

The warrantless search of area in the front of the car incident to the accused's arrest was also lawful. "A search incident to arrest is only valid if it is conducted for a legitimate purpose," said Justice Epstein. "The three main purposes of a search incident to arrest are to ensure the safety of the police and the public, to protect evidence from destruction and to discover evidence that may be

"The three main purposes of a search incident to arrest are to ensure the safety of the police and the public, to protect evidence from destruction and to discover evidence that may be used at trial."

used at trial." Here, the officer said he searched the vehicle for safety reasons. The accused, on the other hand, contended the search was not done for a valid objective. In his view, the officer safety reason was illogical since he was confined in the back of a police cruiser and therefore police safety could not have possibly been in jeopardy. Again, the Court of Appeal disagreed. The trial judge found that the officer's concern in allowing the accused back into the car if he were released would give rise to an officer safety concern based on the possibility that there may be weapons in the car proximate to the driver's seat. This concern was valid in the light of the accused's criminal antecedents and the disturbing behaviour he had exhibited in the course of the stop.

Arrest - Possession of Marihuana

The Court of Appeal also rejected the accused's submission that the officer could not smell marihuana in the course of the safety search. The trial judge accepted the officer's testimony that he could smell raw marihuana in the car and rejected the expert's evidence. The odour of raw marihuana, along with the cash, a second cell phone and the accused's behaviour during the interaction, provided the necessary grounds for the possession arrest.

Evidence Search - the Car

The arrest for possession of marihuana entitled police to search the rest of the car, including the trunk, to obtain further evidence of the offence. "As [the officer] carried out the search for the legitimate purpose of discovering evidence connected to the arrest for possession, it was a lawful search incident to arrest," said Justice Epstein. The search of the trunk did not breach s. 8 of the *Charter* and there was no reason to consider s. 24(2).

The accused's appeal was dismissed.

Complete case available at www.ontariocourts.on.ca

OFFICERS CIVILLY PROTECTED BY REASONABLE MISTAKE OF FACT

Tymkin v. Ewatski et al., 2014 MBCA 4

Police officers attended the plaintiff's residence in the middle of the night to arrest him after his recently-separated wife made an allegation of domestic assault which occurred some two months earlier. They knocked on his door and an occupant (not the plaintiff) answered. Officers told this occupant that they were there to arrest the plaintiff and asked whether he was present. When the occupant confirmed that the plaintiff was home, police asked him to go and get the plaintiff. The police also asked if they could enter and wait while the occupant went to get the plaintiff. He gave the officers permission to enter into the doorway of the dwelling. The officers believed that the occupant had the authority to allow them to enter into the doorway. The officers never left the doorway and waited for the plaintiff to attend. When the plaintiff presented himself the police arrested him for domestic assault, advised him of his *Charter* rights, handcuffed him and took him to the police station where he was released on a recognizance. As it turned out, the occupant who answered the door was an overnight guest. The plaintiff was charged with assault which was subsequently stayed. He then sued police for malicious prosecution, false imprisonment and battery.

Manitoba Court of Queen's Bench

A jury found the arresting officer had the necessary subjective belief to arrest the plaintiff and that he was preventing another incident against the complainant in doing so. As for the entry, the jury concluded that the person answering the door gave the police permission to come in and that the officer thought this person had the right to do so. The jury also held that the handcuffs were not placed too tightly nor was excessive force used. Based on these factual findings by the jury, the judge found the police officers' subjective beliefs were objectively reasonable and the plaintiff's warrantless arrest in his dwelling was lawful. The police had been given

consent to enter by the overnight guest who knew why the police were there and helped them by getting the plaintiff. Furthermore, even if the consent was not valid, the officers were nonetheless protected from civil liability under s. 25(1)(b) of the *Criminal Code* because their error would have been a reasonable mistake of fact. "[I]t's late at night, the person answering the door was just woken up, one can be excused for thinking that the person has authority," said the judge. He held that this mistake of fact, which was reasonable in the circumstances, triggered s. 25(1) protection. The jury awarded provisional damages of $0.

Manitoba Court of Appeal

The plaintiff brought forth an appeal submitting, in part, that the trial judge erred in concluding that the warrantless arrest was lawful because police believed they had permission to enter by someone with the authority to give it.

At common law, the occupant of a residence gives an implied licence to members of the public, which includes police officers, to approach the door of a dwelling and knock in order to communicate with the occupant(s). Provided the approach is for a lawful purpose, such as communicating with the occupant for the specific purpose of arrest, there is no trespass. However, since the police did not have an entry warrant to effect the arrest, the could not enter the dwelling without first obtaining the informed consent from a person having a reasonable expectation of privacy in the house.

Justice Chartier, writing the majority opinion, concluded that even if the overnight guest did not have a sufficient privacy interest in the dwelling to grant permission to the police officers to enter (which rendered the arrest unlawful), the police officers were nonetheless protected under s. 25(1):

> [T]he police officers were aware that they required consent before entering into the dwelling. There was no misapprehension of the law on the part of the police officers. They were not acting on some unreasonable mistaken belief that no consent was required. They sought and obtained consent from a person with ostensible authority. [para. 124]

This was not a case where the police were mistaken in their belief that they could lawfully enter the dwelling without any consent at all. Had they believed that they could enter without consent, that belief would have been a mistake of law and would not have protected them from civil liability. However, the trial judge ruled that the police officers' subjective beliefs that they had the informed consent to enter the home and stay in the doorway from a person with apparent authority to allow it was objectively reasonable. Justice Chartier concluded the trial judge did not err in this regard:

> In this case, ... an occupant of the house, who visibly had been awoken from his sleep, was told by police officers that they were there to arrest the plaintiff and he gave them authority to enter. They had clearly received ostensible authorization to enter, or, ... they had received "authorization to trespass" into the doorway of the dwelling. This was not a mistaken belief on the part of the police officers as to the state of

BY THE BOOK:

Criminal Code: ***Protection of Persons Acting Under Authority***

s.25 (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

... ...

(b) as a peace officer or public officer, is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

"The test for s. 25(1) protection is not whether the police officers had the required consent to enter the dwelling to arrest, but whether they had 'reasonable grounds' to believe they had the required consent to enter."

> the law with respect to the need for consent. [references omitted, para. 126]

And further:

> It is important to recall the wording of s. 25(1). The test for s. 25(1) protection is not whether the police officers had the required consent to enter the dwelling to arrest, but whether they had "reasonable grounds" to believe they had the required consent to enter. ...[A]s long as the police officers' mistake was one of fact, if they "reasonably believed that they had consent to enter the [dwelling], this would give them a defence under s. 25(1) even if, in fact, they had no consent".
>
> As stated above, s. 25(1) protection can also only be triggered if the police officers' mistake was one of fact, not law. In this case, the trial judge found that the police officers made a reasonable mistake of fact. ... The question with respect to the authority to arrest in the house turned on whether the consent given was a valid one "sufficient" to allow entry. The question of the availability of the s. 25(1) protection turned on whether the police officers' mistake was a "reasonable" mistake of fact. In my view, the issues of fact and law in those two questions cannot be entirely disentangled from each other. Whenever a question raises issues of "sufficiency" or "reasonableness," it typically involves a consideration and review of the facts of the case. In the context of a civil case, such as here, those questions would not be questions of law. As a result, I am of the view that the trial judge did not err when he found that the police officers' mistake, in this case, was a reasonable mistake of fact, not a mistake on a question of law. [references omitted, para. 131-132]

The majority agreed with the trial judge's finding that the police officers' mistake of fact was reasonable in the circumstances and that they were entitled to the protection offered by s. 25(1).

A Different View

Justice Monnin, authoring a dissenting opinion, agreed that the trial judge did not err in finding that the police officers' personally held grounds for belief were objectively reasonable and therefor the plaintiff could be arrested. However, he concluded that the police did not have the informed consent to enter the dwelling from a person with the authority to grant access. Although the police generally must obtain an entry warrant to effect an arrest in a dwelling house, there are some exceptions such as valid consent, which must be properly informed and obtained from someone having a privacy interest in the home (not necessarily the target of the arrest). In this case, the purported consent was offered by an overnight guest who, in Justice Monnin's view, was not a person with a reasonable expectation of privacy in the residence. "The police were attending the premises not for an investigatory purpose but with the clear intention of arresting the plaintiff," he said. "In order to gain entry and to effect an arrest without a warrant, they had to obtain the informed consent of an individual with a sufficient privacy interest to allow them to do so. The evidence is that they did not do so. They did not receive consent, let alone an informed consent, from such an individual and consequently ... the plaintiff's arrest was unlawful."

As for the protections afforded under s. 25(1), they did not apply because the police did not have the authority to arrest the plaintiff within the residence. "[S]ince there was no warrant, the only authority to arrest within the dwelling must have arisen from the consent.," said Justice Monnin. "If there was no valid consent, except in the minds of the police officers, the mistaken belief is in fact being used to cloak the police officers with the requisite authority. That is legal boot-strapping." Without the lawful authority to arrest within the dwelling, s. 25(1) did not apply, even if based upon a mistake of fact. Justice Monnin found the trial judge erred in law with respect to the lawfulness of the arrest within the dwelling and the false imprisonment and battery actions should have been successful. He would have awarded nominal damages of $1 and court costs to the plaintiff.

The accused's appeal was dismissed.

Complete case available at www.canlii.org

www.10-8.ca

CONSENT RELEVANT TO LAWFULNESS OF WARRANTLESS DWELLING ARREST

Land v. Law Enforcement Review Board, 2013 ABCA 435

Two police officers arrested a 19-year-old man for allegedly punching his girlfriend in the stomach. The man was released on an assault charge with a condition that he have no contact with his girlfriend pending trial. About a month later, having received information that the man was maintaining contact with his girlfriend, officers went to his residence to arrest him for breaching his recognizance's no-contact condition. Police entered the residence, retrieved the man and placed him under arrest. During the arrest, the man's mother made a motion to shield her son from police, which resulted in her being charged with obstructing a peace officer in the execution of their duties.

A subsequent complaint against the police alleged that the officers unlawfully entered the residence, improperly applied force to the mother, and used profane, abusive and discriminatory language. Two officers were charged under Alberta's *Police Service Regulation* with, among other allegations, entering a residence without proper authorization.

Chief of Police

Following a disciplinary hearing, the Presiding Officer focused on the lawfulness of the officers' entry into the residence and suggested that the issue came down to consent. If the mother consented to police entry, then the arrest was lawful and the officers' actions were justified.

There was conflicting evidence. The mother contended that the officers rang the doorbell, forced their way into the residence and refused to show a warrant despite repeated requests. She said she asked the officers to leave but they stayed and arrested her son. The officers said the mother invited them into the residence. They informed her why they were there and she only asked them to leave after her son was arrested. The Presiding Officer found that the allegation that the officers entered the house unlawfully or made an unlawful arrest were not made out. The Presenting Officer had failed to prove the offences on a balance of probabilities. The charges were dismissed.

Alberta Law Enforcement Review Board

The complainant appealed the Presiding Officer's decision to the Law Enforcement Review Board (LERB). The LERB reversed the Presiding Officer's decision, in part, by finding the officers guilty of unlawful or unnecessary exercise of authority. The LERB held that the officers had no lawful authority to arrest without a warrant anywhere, even had the man been on the street. The LERB opined that offences falling under s 495(2) of the *Criminal Code* do not allow police to arrest without a warrant absent satisfying certain criteria. Since a breach of recognizance is a hybrid offence a warrant was needed to arrest the man because the s. 495(2) criteria were not satisfied. Since there was no arrest warrant, the entry into the house and the arrest were unlawful and their attempts to control the mother constituted "an unnecessary exercise of authority." The LERB found the allegations of entering the residence without proper authorization and remaining inside after being requested to leave were proven.

Alberta Court of Appeal

The officers appealed the LERB's ruling by arguing, among other things, that the LERB erred in concluding that the police had no authority to arrest without a warrant and that the arrest was not otherwise justified. They wanted the Presiding Officer's findings of no misconduct reinstated. The officers suggested that the LERB failed to consider s. 524(2) of the *Criminal Code* which, in their view, would not have required a warrant to arrest the man on the street for breaching a recognizance.

The Court of Appeal found the LERB was mistaken in holding that a warrant was required to arrest the man on the street. However, the arrest was not made on the street but rather in a residence.

Making an arrest in a dwelling house generally requires a warrant to enter even if the police have the power to arrest under ss. 495(1) or 524(2) of the *Criminal Code*. Absent an exception, such as hot pursuit or exigent circumstances, the police require a warrant to enter for the purpose of arresting a person in their home for breach of recognizance. A warrantless arrest in a private residence may also be lawful where the police are authorized by the homeowner to enter and remain inside.

In this case, the LERB did not explicitly consider lack of consent as a necessary component to unlawful arrest. This failing was an err in law. The charges against the officer spoke to lawfulness and it was incumbent upon the LERB to consider all elements of unlawful arrest, which included the lack of consent. Since the LERB failed to consider s. 524 (2) of the *Criminal Code* and the issue of consent as part of the test in determining whether the arrest was unlawful, the matter was remitted back to the LERB for further consideration. Justice Conrad, writing a dissenting opinion on other matters, agreed with the majority decision on the issue of consent.

Complete case available at www.albertacourts.ab.ca

YOUTH NOT DETAINED: s. 146 YCJA DID NOT APPLY

R. v. Todorovic, 2014 ONCA 153

Police knew that the accused's boyfriend had killed a 14-year-old victim. They also knew about an incident some three months earlier alleging the accused told her boyfriend that she wanted him to stab the victim. As part of the murder investigation, an officer called the accused's mother, told her that there had been an incident and that the police wanted to speak to the accused. He asked the mother to bring the accused to the station. Before the video-taped interview, the police gave the accused a K.G.B. warning, as they had with other witnesses. She was told the following:

Nobody can force you to make a statement. This door is only, will, will be closed but it's not locked. All right? You're not, you're not here under arrest all right? Do you understand your right to choose whether or not to make a statement.

The accused replied in the affirmative and agreed to give a statement. She was then placed under oath and an interview started at 3:05 am. This interview terminated when the accused made an incriminating statement to the effect that she had asked her boyfriend to kill the victim. She was left alone in an interview room for several hours, spoke to duty counsel and was explained her rights under s. 146 of the *Youth Criminal Justice Act* (*YCJA*). She said she wanted her mother present. Her mother returned to the police station and the questioning began after s. 146 rights were once again explained. The accused waived her right to have a lawyer present.

Ontario Superior Court

The Crown sought to introduce the accused's 3:05 am statement, among other evidence. The Crown argued that the accused was not detained during the interview until she made a specific incriminating statement at which point the interview ended. Thus, s. 146 *YCJA* did not apply to that statement. The accused, on the other hand, submitted that the statement was inadmissible because the police did not comply with s. 146.

The judge found that the accused and her mother were contacted by a police officer. In response, they freely came to the police station to assist with the investigation. Once at the station, the investigating officers told the accused and her mother that while the door to the interview room was shut, it was not locked and that she was not under arrest. As well, the officers told the accused she was not obliged to give a statement. The judge also concluded that the police did not have reasonable grounds to believe the accused committed an offence until her admission at the very end of the interview. The police believed she was an important witness, not a suspect. As a result of the accused's statements and other circumstantial evidence she was convicted of first degree murder and sentenced as an adult to life imprisonment without eligibility for parole for seven years.

BY THE BOOK:

Youth Criminal Justice Act: s. 146(2)

When Statements Are Admissible

s. 146 (2) No oral or written statement made by a young person who is less than eighteen years old, to a peace officer or to any other person who is, in law, a person in authority, on the arrest or detention of the young person or in circumstances where the peace officer or other person has reasonable grounds for believing that the young person has committed an offence is admissible against the young person unless

... ...

(b) the person to whom the statement was made has, before the statement was made, clearly explained to the young person, in language appropriate to his or her age and understanding, that

(i) the young person is under no obligation to make a statement,

(ii) any statement made by the young person may be used as evidence in proceedings against him or her,

(iii) the young person has the right to consult counsel and a parent or other person in accordance with paragraph (c), and

(iv) any statement made by the young person is required to be made in the presence of counsel and any other person consulted in accordance with paragraph (c), if any, unless the young person desires otherwise;

(c) the young person has, before the statement was made, been given a reasonable opportunity to consult

(i) with counsel, and

(ii) with a parent or, in the absence of a parent, an adult relative or, in the absence of a parent and an adult relative, any other appropriate adult chosen by the young person, as long as that person is not a co-accused, or under investigation, in respect of the same offence; and

(d) if the young person consults a person in accordance with paragraph (c), the young person has been given a reasonable opportunity to make the statement in the presence of that person.

Ontario Court of Appeal

The accused challenged her conviction, again arguing that she was detained during the 3:05 interview within the meaning of s. 146(2) of the *YCJA*. She also submitted that before she made the incriminating statement at the end of the interview, the officer had reasonable grounds to believe that she had committed an offence which itself triggered s. 146(2).

Section 146(2) requires that the police provide a young person with information and rights beyond those provided under common law or under s. 10 of the *Charter* if the young person is under arrest or detention, or the officer has reasonable grounds for believing that the young person has committed an offence.

Detention

Using ss. 8 and 9 *Charter* jurisprudence to define the meaning of detention for the purposes of s. 146(2), Justice Rosenberg, authoring the Court of Appeal's opinion, noted that the accused had no legal obligation to comply with the officer's request to attend the police station. Thus, the question became whether the circumstances in this case amounted to psychological detention. It was the accused's view that the officer's request was a demand or direction and a reasonable person in her circumstances would conclude that there was no choice but to comply. She also contended that it was never made clear to her that she could leave at any time. The Crown, on the other hand, maintained that the accused was not detained until the specific incriminating statement was made at which point the interview ended and police complied with s. 146 before taking another statement.

The Court of Appeal upheld the decision of the trial judge that there was no demand or direction amounting to a psychological detention arising from the police request for the accused to attend the police station. The accused and her mother freely attended, the mother wanted to assist the police in what ever way she and her daughter could, and her actions and statements at the time did not suggest

she had no choice but to attend the station. Nor was there a detention when the accused and her mother were placed in the interview room and the door was closed. Justice Rosenberg stated:

> The door was closed, but the [accused] and her mother were told that the door was not locked. While they were not told explicitly that they could leave at any time, they were told that nobody could force the [accused] to make a statement and that she was not under arrest. The [accused] agreed that she understood she had the right to choose whether or not to make a statement. It was not necessary for the officers to expressly tell the [accused] that she could leave at any time. The only reason she was there was to make a statement. If she chose not to make a statement there was no reason for her to remain. [para. 17]

Reasonable Ground to Believe the Accused Committed an Offence

The accused also submitted that the investigating officers had reasonable grounds to believe that she had committed an offence (party to the murder) and therefore s. 146(2) applied at the time of the 3:05 am interview. But again, the Court of Appeal found the trial judge's decision was supported by the evidence. The officers only had reasonable grounds to believe the accused was a party to the offence much later in the interview. When the accused acknowledged she asked the suspect to kill the victim, s. 146 was then triggered and the police properly broke off the interview, advised the accused of her rights and gave her the opportunity to speak to duty counsel.

The accused's appeal was dismissed.

Complete case available at www.ontariocourts.on.ca

Charter

s. 8 Everyone has the right to be secure against unreasonable search or seizure.

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

s. 10(b) Everyone has the right on arrest or detention ... (b) to retain and instruct counsel without delay and to be informed of that right.

STAY UNWARRANTED: NO NEXUS BETWEEN POST-INVESTIGATION CHARTER BREACH & OFFENCES

R. v. Poletz, 2014 SKCA 16

Police officers who were patrolling a country music jamboree attended by 20,000+ people received instructions from a supervisor to ensure that all vehicles in the campground were parked for the night as there were concerns for the safety of the public walking around the area. At about 8:30 pm the officers observed a truck slowly navigating through a large crowd of jamboree attendees. The officers pulled the vehicle over and the accused was arrested for impaired driving. Open liquor was also found in the truck. He was taken to the police station and held for 12 hours after he provided breath samples of 180mg% and 170mg%. He was charged with impaired driving, over 80mg% and open liquor in a vehicle under Saskatchewan's *Alcohol and Gaming Regulation Act*.

Saskatchewan Provincial Court

The judge concluded that the circumstances of the accused's arrest had resulted in four separate *Charter* breaches. First, the judge found the accused had been arbitrarily detained under s. 9. He found the officers decision to stop the accused was not related to highway safety and therefore the detention powers under s. 209.1 of Saskatchewan's *Traffic Safety Act* did not apply. Nor was there any evidence to suggest the officers had any grounds to believe the accused was involved in criminal activity before the stop. Rather, the pull over was aimed at enforcing a curfew and discouraging vehicle movement in the campground area. Second, the judge ruled that the officer making the breath demand did not have sufficient grounds to do so, thus resulting in an unreasonable seizure of his breath samples (a s. 8 breach). Third, the police denied the accused his right to consult counsel under s. 10(b). The police pushed the accused into speaking with Legal Aid duty counsel and did not allow him to contact a lawyer of his choice. Finally, the judge found the accused was subject to an

additional arbitrary detention under s. 9 when he was unnecessarily held for 12 hours. In the judge's view, the police should have tried to find or allowed the accused an opportunity to find someone to take care of him.

The judge found the three investigatory breaches (i.e., the stop, the arrest and the right to counsel) did not warrant the exclusion of evidence under s. 24(2) of the *Charter*. The Certificate of Analyses was admitted and the accused was convicted of driving while over 80 mg% and for having open liquor in his vehicle. However, the judge concluded that the 12 hour post-investigation detention warranted a stay of proceedings because the police were acting out of "reasons of convenience and/or lack of resources." This was one of "the clearest of cases" for a stay and there was no other appropriate or just remedy in the circumstances. A stay of proceedings would not only redress the past wrong (the arbitrary detention), but would serve to prevent a perpetuation of such arbitrary detentions in the future and encourage the police to comply with ss. 497 and 498 of the *Criminal Code*.

Saskatchewan Court of Queen's Bench

Both the Crown and the accused appealed. The Crown challenged the trial judge's findings of the *Charter* breaches and his imposition of the stay of proceedings. The accused, on the other hand, wanted the Certificate of Analyses excluded as evidence.

Even though the appeal judge might not have arrived at the same conclusions on the *Charter* breaches, he did not interfere with the trial judge's findings because there was evidence which was "reasonably capable" of supporting them. The appeal judge also ruled the trial judge had correctly applied the law in admitting the Certificate of Analyses into evidence in spite of the three investigatory breaches. However, the appeal judge set aside the stay as a remedy for the post-investigation s. 9 breach for arbitrarily detaining the accused for 12 hours following the conclusion of the police investigation. In his view, there was no connection between the post-investigation *Charter* breach and the charges. The matter was remitted back to provincial court for sentencing.

Saskatchewan Court of Appeal

The accused challenged the reversal of the stay, arguing the appeal judge erred. But this submission was rejected. "There is plainly no nexus between the arbitrary detention and the conviction of [the accused] on the over 80 and open liquor charges so as to warrant a stay of the entering of those convictions," said Justice Caldwell, writing the Court of Appeal's judgment. Nor did this case warrant a stay in the absence of a nexus because the police misconduct was not so egregious that going forward with the case would be offensive. Justice Caldwell continued:

> That is to say, because the misconduct here is minor and there is no nexus between the convictions and the Charter breach in this case, the remedy of a stay is, to all appearances, entirely out of proportion to the breach and could, by its weight, bring the administration of justice into disrepute. In my opinion, it would seem to the public utterly incongruous to have properly found [the accused] guilty on the two charges he faced only to then stay the entering of his convictions on those charges simply because the state had held him in detention longer than was appropriate in the circumstances where its resources were taxed by the policing demands of the Craven Jamboree. To the public, this would amount to an acquittal in the face of clear, convincing and admissible evidence of guilt and would only serve, in the circumstances, to itself raise questions as to the integrity of the justice system.

"[B]ecause the misconduct here is minor and there is no nexus between the convictions and the Charter breach in this case, the remedy of a stay is, to all appearances, entirely out of proportion to the breach and could, by its weight, bring the administration of justice into disrepute."

> Also, a stay was not the only available remedy. The trial judge could have taken the arbitrary detention into account in sentencing [the accused] on his over 80 and open liquor convictions. However, because the charges did not contemplate a sentence which included a period of incarceration, the available remedies here were necessarily limited to a reduction of the amount of the fines which the trial judge could have imposed upon [the accused]. The trial judge acknowledged this, but fell into error when he allowed his dissatisfaction with the available remedies to persuade him that a stay was therefore appropriate in the circumstances. [references omitted, paras. 11-12]

And further:

> ... I conclude the state conduct here does not fall into the residual category where a nexus is not required because that conduct cannot be said to connote "unfairness or vexatiousness of such a degree that it contravenes fundamental notions of justice and thus undermines the integrity of the judicial process". And, finally, if any doubt remained, the third criterion, the traditional balancing of interests, heavily tips the scales in favour of proceeding to a final decision on the merits for the reasons noted above.
>
> More plainly, the 12-hour arbitrary detention did not warrant a stay of proceedings because it gave rise to no prejudice to [the accused's] ability to make full answer and defence; and, given the reasons the trial judge found for its occurrence (i.e., "convenience and/or lack of resources", which must be tempered with an undertone of practicality in the context of the Craven Jamboree), the arbitrary detention could but have marginally affected the integrity of the justice system, which effect was reasonably remediable by a reduction in sentence. [reference omitted, para. 15-16]

The remedy of a stay was neither proportionate nor a reparative response to the arbitrary detention and the accused's appeal was dismissed.

Complete case available at www.canlii.org

Editor's note: Additional case facts taken from *R. v. Poletz*, 2009 SKPC 121 and 2012 SKQB 148.

MASSAGE + MASTURBATION AMOUNTED TO SEX ASSAULT

R. v. Bourdon, 2014 ABCA 34

The accused, a chiropractor, massaged a patient's back and neck with one hand. With his other hand, which he tried to hide from his patient, he masturbated. He was charged with sexual assault.

Alberta Provincial Court

The trial judge convicted the accused. Although the accused claimed the touching was not of a sexual nature, the judge was satisfied that all of the elements of sexual assault had been proven beyond a reasonable doubt.

Alberta Court of Appeal

The accused appealed his conviction arguing the therapeutic massaging of his patient's back and neck was not of a sexual nature. The Court of Appeal, however, disagreed. "A deliberate touching without consent is an assault," said the Court of Appeal. There was a deliberate touching of the complainant without her consent, thus an assault was made out. The accused's own evidence demonstrated that he knew his patient did not consent to the treatment with one hand while he masturbated with the other. And the assault was for a sexual nature. The accused conceded that he was sexually gratifying himself at the same time he was touching the victim.

The accused's suggestion that his conduct be parsed - therapeutic touching with the one hand and performing an indecent act with the other - was also rejected. "Given that the two manipulations were simultaneous, the trial judge's finding that the [accused's] massaging of his patient's back and neck had sexual gratification as its purpose was not unreasonable," said the Court of Appeal,

The accused's appeal was dismissed.

Complete case available at www.albertacourts.ab.ca

HIT & RUN: INTENT MUST BE TO AVOID CIVIL OR CRIMINAL LIABILITY

R. v. Stanton, 2014 ONCA 29

After playing a round of golf and having some drinks, the accused was driving on an unfamiliar, tree-lined rural road when he hit something at 10:30 pm. He believed it was a deer, but it was actually a cyclist that he struck and killed. The accused continued home, left his damaged car in his driveway and had a cigarette. His friend's wife then drove him back to the area of the impact. The police were on the scene and had blocked the road. He did not report that he was involved in an accident. He returned home and called the police at 12:40 am to report he had been involved in a collision earlier that evening. He was charged with failing to stop at the scene of an accident under s. 252(1.3) of the *Criminal Code*.

Ontario Court of Justice

The accused conceded that he was involved in the accident with the cyclist and left the scene without identifying himself or assisting the cyclist. However, he testified that he thought he had hit a deer. The Crown called expert evidence from two accident reconstruction officers suggesting that the accused either knew he hit a cyclist or was wilfully blind to that fact. The judge found the accused's evidence rebutted the presumption in s. 252(2) of the *Criminal Code*. He had raised a reasonable doubt about whether he failed to stop with the intention of avoiding civil or criminal liability. The judge also found the expert evidence about the mechanics of the accident did not prove beyond a reasonable doubt the accused's intent, that he could not have hit the cyclist without seeing him or that he was willfully blind to that fact. The accused was acquitted

Ontario Court of Appeal

The Crown appealed the acquittal arguing, in part, that the trial judge failed to consider all of the evidence relative to the accused's intent. The Court of Appeal, however, disagreed. In this case, the trial judge assessed all of the evidence, including that of the experts, in finding a reasonable doubt about the accused's intent. She addressed the Crown's submission that the accused must have had suspicions he hit a person because of the nature of the accident and that his alcohol consumption was a reason for fleeing. The trial judge did not err with respect to the intent required under s. 252 and the Crown's appeal was dismissed.

Complete case available at www.ontariocourts.on.ca

REASONABLE DOUBT APPLIED TO EVIDENCE AS A WHOLE, NOT INDIVIDUAL PIECES

R. v. R.B.H., 2014 SKCA 17

The police responded to a call that a taxi cab driver had been assaulted with a knife and bear spray. When police cordoned off an area around the crime scene they located the accused, along with two other young men. As an officer approached the three young men he saw the accused shove something down his pants trying to conceal it. The accused denied having anything in his possession. He was searched and a canister marked bear spray was found down the front of his pants. When asked why he had the bear spray, the accused said he kept it "for protection while on the streets." He was charged with carrying a concealed weapon.

Saskatchewan Provincial Court

The pressurized canister which was clearly marked as "bear spray" was entered as an exhibit. The judge, however, acquitted the accused because the canister of bear spray was empty and an empty canister is not a weapon unless it was actually used in an attack. Since it was not proven to be a weapon, there was no need to decide wether the canister of bear spray was "concealed." The accused was acquitted.

Saskatchewan Court of Queen's Bench

The Crown appealed the accused's acquittal. The appeal judge found that the trial judge erred in finding the canister was in fact empty. However, he ruled that the Crown had failed to prove the canister contained bear spray. "Proving that [the accused] carried bear spray, however, requires more than just producing a canister labelled 'bear spray' and assuming that the contents match the label," he said. "One reasonably may infer that the canister might contain bear spray, or perhaps even that it probably contains bear spray, but neither a possibility nor a probability is sufficient to establish proof beyond a reasonable doubt." Since the Crown did not sufficiently prove that the accused was carrying bear spray, the acquittal was upheld.

Saskatchewan Court of Appeal

The Crown again challenged the acquittal by submitting that the appeal judge failed to consider the whole of the evidence and only focussed on the canister. Justice Ryan-Froslie, delivering the Court of Appeal's opinion, agreed. "In determining guilt or innocence a judge must weigh all of the evidence," she said. "The standard of proof, being beyond a reasonable doubt, is not to be applied to individual pieces of evidence. Rather, it is to be applied to the evidence as a whole for the purpose of determining whether each of the necessary elements of an offence has been established." She continued:

> In this case, the summary conviction appeal judge focused solely on the canister and in doing so ignored relevant circumstantial evidence which may have supported a finding that the canister contained bear spray. In addition to the canister itself, that circumstantial evidence included the peace officer's testimony that he saw [the accused] stuff something down the front of his pants, that R.B.H. denied two or three times that he was hiding anything, that the canister was found in the front of [the accused's] pants and that when the peace officer asked [the accused] why he had bear spray on him, [the accused] replied that he "… keeps it for protection while on the streets". In failing to consider all of the evidence the trial judge erred in law. [para. 16]

The Crown's appeal was allowed, the accused's acquittal was set aside and a new trial was ordered.

Complete case available at www.canlii.org

THEFT & THREAT WERE SEPARATE INCIDENTS: s. 343(a) ROBBERY NOT MADE OUT

R. v. McKay, 2014 SKCA 19

The accused entered an off-sale establishment, grabbed a bottle of whiskey and ran out the door. A shopkeeper chased after him. After about 100 metres, the accused turned around, pulled a knife from his pocket and swung it at his pursuer from a distance of about 1.5 metres. The accused then verbally threatened the shopkeeper to stop chasing him. The accused took off and the police were called. Officers immediately attended the area, found the accused running from the scene and arrested him. A bottle of whiskey and a knife were found nearby. The accused provided a warned statement admitting he stole the whiskey, ran out of the store with it, had a knife when he threatened the shopkeeper and dropped the knife when the police caught him. He was charged with robbery under s. 343(a) of the *Criminal Code*.

Saskatchewan Provincial Court

The accused argued that the theft of the whiskey and the threat he made to the shopkeeper were two separate incidents. The judge disagreed, finding the theft and the threat to stab were one continuous event. She held that the threat was made to overcome resistance to the theft by encouraging the pursuer to discontinue the chase and enabling the accused to maintain possession of the stolen goods. Thus, the charge of robbery was made out and the accused was sentenced to 36 months imprisonment less five months of remand time.

Saskatchewan Court of Appeal

The accused argued that he should only have been convicted of theft. The Crown, on the other hand, suggested the theft continued from the taking of the liquor to the threat which was made to overcome the resistance to the stealing.

The Court of Appeal ruled that the theft and threat were *two separate incidents*. The theft was complete when the accused took the liquor from the counter and before the accused made the threat. The threat was made as a warning to the shopkeeper to not chase anymore. The threat occurred after the theft was complete and therefore the robbery conviction under s. 343(a) could not stand. "There is no evidence the knife was used in the commission of the theft and the threat was a distinct transaction from the theft," said Justice Lane. However, a conviction for the included offence of theft was substituted. Because the Crown chose to proceed with robbery under s.343(a) and not s. 343(b), the only appropriate conviction was theft.

BY THE BOOK:

Criminal Code: ***s. 343 (a) v. (b) Robbery***

s.343 Every one commits robbery who

(a) steals, and for the purpose of extorting whatever is stolen or prevent or overcome resistance to the stealing, uses violence or threats of violence to a person or property;

(b) steals from any person and, at the time he steals or immediately before or immediately thereafter, wounds, beats, strikes or uses any personal violence to that person.

The accused' appeal was allowed, his robbery conviction set aside, a conviction for theft under $5,000 was entered and he was re-sentenced only to time served.

Complete case available at www.canlii.org

FACTORS VIEWED COLLECTIVELY & CONTEXTUALLY PROVIDE NECESSARY GROUNDS

R. v. Wunderlich, 2014 ABCA 94

An Alberta police officer stopped the accused after seeing his vehicle cross over the fog line onto the shoulder of a highway. The vehicle also did not have mud flaps. As the officer approached along the passenger side, he noticed a large dog that prevented him from engaging the driver. He circled around the back of the vehicle and approached the driver's side. As he did so, he observed a mattress in the rear box of the truck. While the officer spoke to the accused, he made a number of other observations that raised his suspicions: (1) the vehicle had a "very lived-in look"; (2) the presence of a mattress and a jerry can indicated that the accused did not want to leave the vehicle unattended; (3) there were numerous air fresheners hanging from the rear-view mirror, several of which were emitting odour; (4) a large dog was present; (5) the accused said he was travelling from Vancouver to Regina, but the highway travelled was not the most direct route for his supposed travel plans; (6) the accused claimed that he planned to go hunting but the officer knew hunting season was not open for non-residents; and (7) the accused appeared to be overly nervous for a traffic stop, his carotid artery was pulsating and he became increasingly nervous as the stop continued.

A computer check revealed the accused had been queried two days earlier by the Vancouver police. However, he told the officer that he left Vancouver four days earlier and stayed overnight with his sister in Kelowna and then stayed the following night in Edmonton. The officer returned to the accused's vehicle and noted that his nervousness had not subsided. His face was now flushed. The accused then changed his story about his travel plans, indicating that he was going to Saskatoon, rather

than Regina. This story would be more consistent with travelling the highway he was on. At this point the officer formed the suspicion that the accused was involved in drug related activity. He detained the accused and deployed his police service dog to sniff around the exterior of the vehicle. The dog indicated the presence of narcotics. The accused was arrested for possessing a controlled substance and 9.5 lbs of marihuana was found when the vehicle was searched.

Alberta Provincial Court

The accused argued that his rights under ss. 8 and 9 of the *Charter* had been violated. But the judge was satisfied that the officer had a reasonable suspicion - more than a hunch - that the accused was involved in a drug-related offence before he was detained and before the dog was deployed to sniff the vehicle. The judge recognized that individual pieces of evidence may be neutral when viewed in isolation (eg. messy or "lived in" appearance, air fresheners, travelling with a dog), but the correct test was to look at the evidence as a whole. He also recognized the officer's experience and training in relation to drug investigations. There were no *Charter* breaches, the evidence was admitted and the accused was convicted of possessing marihuana for the purpose of trafficking.

Alberta Court of Appeal

The accused appealed his conviction arguing, in part, that the trial judge failed to properly consider the evidence when concluding there were no ss. 8 or 9 *Charter* breaches. But the Court of Appeal disagreed.

Majority

Justices Watson and Rowbotham found the trial judge was alive to the neutrality of several factors cited as evidence to support a reasonable suspicion. In their view, however, there were also several important non-neutral factors. These included the change in the accused's itinerary to explain why he was on the highway and his travel plans were inconsistent with the vehicle query in Vancouver. The majority ruled that the trial judge adequately considered the testimony of the officer and explained that, "while some of the individual indicators may have been neutral, collectively, in context, and with the officer's training and experience, the factors raised a reasonable suspicion that the [accused] was involved in drug related activity."

Another View

Justice Berger, concurring in the result, gave his own reasons. In his view, even without the conversation between the officer and the accused, "the 'drug investigation profile indicators' observed by the investigating constable [were] sufficient ... to establish the mere 'possibility' of criminality to warrant the subsequent search." These included:

1. The presence of a mattress and jerry can in the box of the vehicle "at the time of the year when it can be very cold in this part of the world, if one was planning to sleep there." This was said to be consistent with a drug courier who would be unwilling to leave his vehicle.
2. The numerous air fresheners.
3. The lived-in look of the vehicle, including the multiple fast food containers throughout.
4. The accused's nervousness which "intensified" as evidenced by his pulsating carotid artery.
5. The discovery that the accused's licence had been queried two days earlier in Vancouver.
6. When the officer returned to the vehicle, but before the conversation took place, the accused's complexion was now flushed.

The accused's appeal was dismissed.

Complete case available at www.albertacourts.ab.ca

OOPS

In Volume 14 Issue 1 at page 17 it was reported in the headline that "U.S. On-Duty Deaths Increase." This was an error. The number of deaths for on-duty officers in the U.S. actually decreased as outlined in the article. The headline should have read "U.S. On-Duty Deaths Decrease." This is all good news in that there has been significant decreases in on-duty deaths over the last several years.

INTENTION TO STOP AROSE ON PUBLIC HIGHWAY: PRIVATE PROPERTY PULLOVER LAWFUL

R. v. Anderson, 2014 SKCA 32

A police officer followed the accused's vehicle in the early morning hours with the intention to stop it and check the driver for his licence, registration and sobriety. The vehicle, however, turned into a private yard where the accused resided. The police officer followed, drove onto the private yard and activated his emergency lights to stop the vehicle. The vehicle continued in the private yard and eventually came to a stop in front of a large building at 12:47 am. Up to this time the police officer had observed no driving infractions nor any other offences committed by the vehicle or its driver. The police officer got out of his car and approached the accused's vehicle. The accused complied with a request to produce his driver's licence and vehicle registration. He said he had "a couple of beers" when asked about drinking. The officer formed a reasonable suspicion that the accused had alcohol in his body and demanded a breath sample into an approved screening device (ASD) under s. 254 (2) of the *Criminal Code* at 1:02 am. The officer turned on the ASD, explained the procedure while the ASD warmed up and obtained a sample at 1:18 am which registered a fail. Immediately thereafter the officer made a breath demand under s. 254(3) of the *Criminal Code*, gave the police warning and advised the accused of his right to counsel, which was declined. The accused was taken to a police detachment and subsequently provided two breath samples at 2:31 am and 2:49 am, registering readings of 170 mg% and 160 mg%. He was charged with operating a motor vehicle while his blood alcohol level exceeded 80 mg%.

Saskatchewan Provincial Court

The judge found the traffic stop unlawful. Since the officer did not attempt to stop the accused until he left the public highway and entered onto private property, the police lacked the authority to stop

Stop - 00:47 hrs
Reasonable Suspicion + ASD Demand - 01:02 hrs
ASD Sample Taken - 01:18 hrs

under Saskatchewan's *Traffic Safety Act* (*TSA*). Thus, the accused's detention breached s. 9 of the *Charter*. Furthermore, because 31 minutes elapsed from the time of the stop until the ASD demand was made, the judge concluded the demand was not made "forthwith" as required by s. 254(2). Therefore, the officer was required to advise the accused of his right to counsel under s. 10(b). The Certificate of Analyses was excluded from evidence and the accused was found not guilty of driving over 80 mg %.

Saskatchewan Court of Queen's Bench

The Crown's appeal was successful. An appeal judge ruled that Saskatchewan's *TSA* permitted a police officer to follow a vehicle from a public highway onto private property and stop the vehicle to perform a random vehicle check, provided the officer had formed the intention to stop the driver while on a public highway. The accused had not been arbitrarily detained and his rights under s. 9 had not been violated. In addition, the appeal judge found that the trial judge erred in law in determining that the ASD demand was not made "forthwith." In his view, "forthwith" did not mean "immediately" and the time to consider commenced with the ASD demand. The Certificate of Analyses was admitted and a conviction was entered.

Saskatchewan Court of Appeal

The accused then appealed his conviction arguing that the stop did breach s. 9 of the *Charter* because the police lacked the requisite authority to stop him and that the trial judge was correct to conclude that the ASD sample was not taken forthwith.

Vehicle Stop

The accused suggested that *TSA* did not provide statutory authority for the police to make random stops on private property, regardless of whether the

BY THE BOOK:

Saskatchewan's *Traffic Safety Act*

s. 209.1(1) A peace officer may require the person in charge of or operating a motor vehicle to stop that vehicle if the peace officer:

(a) is readily identifiable as a peace officer; and

(b) is in the lawful execution of his or her duties and responsibilities.

(2) A peace officer may, at any time when a driver is stopped pursuant to subsection (1):

(a) require the driver to give his or her name, date of birth and address;

(b) request information from the driver about whether and to what extent the driver consumed, before or while driving, alcohol or any drug or other substance that causes the driver to be unable to safely operate a vehicle; and

(c) if the peace officer has reasonable grounds to believe that the driver has consumed alcohol or a drug or another substance that causes the driver to be unable to safely operate a vehicle, require the driver to undergo a field sobriety test.

(3) No person in charge of or operating a motor vehicle shall, when signalled or requested to stop by a peace officer pursuant to subsection (1), fail to immediately bring the vehicle to a safe stop.

(4) No person in charge of or operating a motor vehicle shall fail, when requested by a peace officer, to comply with the requests of a peace officer pursuant to subsection (2).

officer had formed the intention to check his driver's licence and registration and conduct a sobriety test while he was on a public highway. The Crown, on the other hand, submitted that the officer was entitled to pursue the accused's vehicle because he was already in the process of exercising an important and legitimate policing function. In its

"[W]here a police officer has formed the intention to stop a driver on a public highway pursuant to s. 209.1 of The Traffic Safety Act, the police officer is acting within the statutory authority by following the driver onto private property in order to complete his investigation."

view, the critical point in time to consider was when the police officer formed the intention to stop the accused's vehicle, not when he first expressed that intention by activating his emergency flashers.

In this case, although the officer did not actually activate his emergency lights or otherwise express his intention to stop the accused until he entered onto private property, the accused was driving on a public highway when the officer formed the intention to stop it. This was to be distinguished from the random stop of a driver who was and always remained on private property when observed by police. Justice Whitmore, speaking for the Court of Appeal, put it this way:

> It is a fact found by the trial judge that the police officer formed the intention to stop the [accused] prior to the [accused] turning onto private property. In my view, the police officer must be allowed sufficient flexibility in carrying out his duties to complete that lawful activity. Interference with the [accused] here was minimal and the entry onto private property, to complete the check stop, was reasonably necessary, having regard to the nature of the liberty interfered with and the public purpose served by the interference.
>
> To decide otherwise would encourage drivers to seek the sanctuary of private roadways if they suspected they were about to be stopped by police. In the circumstances of this case, where a police officer has formed the intention to stop a driver on a public highway pursuant to s. 209.1 of The Traffic Safety Act, the police officer is acting within the statutory authority by following the driver onto private property in order to complete his investigation. [paras. 24-25]

"The so-called "forthwith window" ... begins when the police officer develops a reasonable suspicion that the accused has alcohol in their body."

Forthwith

The accused contended that "forthwith" in s. 254(2) meant "immediately." He submitted that the entire period from the initial pull over until he was read his right to counsel was relevant when determining whether his breath sample had been taken "forthwith." As a result, he argued that his right to counsel under s. 10(b) had been violated. The Crown, to the contrary, suggested that "forthwith" did not mean "immediately" and that all of the circumstances of the case must be considered when determining whether the "forthwith" requirement had been complied with. The Crown also argued that the delay under s. 254(2) starts when the officer formed a reasonable suspicion that the driver had alcohol in his body, not necessarily when the vehicle was stopped.

Justice Whitmore noted that the Supreme Court of Canada has held that "forthwith" means "immediately" (*R. v. Woods*, 2005 SCC 42), which has further been articulated to mean "without unreasonable or unjustified delay." The Court of Appeal found the appropriate time frame to consider whether a demand had been made forthwith and whether s. 10(b) had been breached was the time commencing when the officer formed the requisite reasonable suspicion:

> The so-called "forthwith window," being the time within which the police officer must require a driver to provide a breath sample, in my view, does not commence prior to the time when a police officer develops a reasonable suspicion that the accused had alcohol in his body, as the trial judge effectively held. Nor does it begin with the ASD demand, as the summary conviction appeal judge held. Rather, it begins when the police officer develops a reasonable suspicion that the accused has alcohol in their body. [para. 31]

Here, the accused's admission to having consumed alcohol came shortly before the ASD demand was made, not immediately after the stop. Thus, the delay to assess for reasonableness was not 31 minutes, as found by the trial judge, but rather 16 minutes. In this case, the 16 minute delay was attributed to the operational requirements of the testing (readying the equipment):

> [T]he police officer is to be afforded reasonable time to ready the ASD. There is no evidence before the Court of how much time is usually required for an ASD to warm up and become operational. However, the trial judge found no fault in the ASD taking 16 minutes to warm up ...
>
> In my view, the 16 minutes it took for the ASD to warm up and become operational was reasonable and did not offend the "forthwith" requirement in s. 254(2) of the Code. [paras. 39-40]

The accused's appeal was dismissed.

Complete case available at www.canlii.org

SEATBELT OFFENCE ONE OF STRICT LIABILITY

R. v. Wilson, 2014 ONCA 212

While conducting spot checks, a police officer standing near a corner watched the accused stop his vehicle at a stop sign. The officer noticed that the accused's seatbelt was hanging by his shoulder. The officer directed the accused to pull over and then issued him a Provincial Offences Notice for failing to wear a seatbelt contrary to s. 106(2) of Ontario's *Highway Traffic Act* (*HTA*)

Justice of the Peace

At his trial the accused said he had placed a coffee in a cup holder in the backseat of his car. While driving, he noticed the coffee was spilling on his laptop. When the officer observed him, he had just pulled up to a stop sign and removed his seatbelt so he could straighten the coffee cup. He said there was no other traffic around at the time and he intended to put his seatbelt back on as soon as he adjusted the coffee cup. The Justice of the Peace held that failing to wear a seatbelt was an absolute liability offence and convicted the accused.

BY THE BOOK:

Ontario's *Highway Traffic Act*

Use of seat belt assembly by driver

s. 106 (2) Every person who drives on a highway a motor vehicle in which a seat belt assembly is provided for the driver shall wear the complete seat belt assembly as required by subsection (5).

How to wear seat belt assembly

(5) A seat belt assembly shall be worn so that,

(a) the pelvic restraint is worn firmly against the body and across the hips;

(b) the torso restraint, if there is one, is worn closely against the body and over the shoulder and across the chest;

(c) the pelvic restraint, and the torso restraint, if there is one, are securely fastened; and

(d) no more than one person is wearing the seat belt assembly at any one time.

Ontario Court of Justice

The accused appealed his conviction arguing, among other grounds, that the offence for a driver failing to wear a seatbelt was one of strict, rather than absolute liability. The judge ruled in favour of the accused and concluded that failing to wear a seatbelt was a strict liability offence affording him a due diligence offence. A new trial was ordered.

Ontario Court of Appeal

A strict liability offence lies "between the extremes of true criminal offences that require proof of a guilty state of mind (intention, knowledge or recklessness) and public welfare offences imposing absolute liability, where conviction will follow upon proof that the accused did the prohibited act with no consideration of the accused's state of mind or degree of fault." With a strict liability offence, the prosecution makes out its case by proving the doing of the prohibited act, but the accused may avoid conviction by proving on a balance of probabilities that they took reasonable care to avoid the prohibited act.

In most cases, Ontario's *HTA* does not clearly specify the level of fault required. The courts are then left with the task of determining which of the three categories an offence falls within. In this case, the Ontario Court of Appeal found the offence of a driver failing to wear a seatbelt under s. 106(2) was one of strict liability. There was nothing in the way the offence was defined to displace the strong presumption of strict liability as articulated in *R. v. Sault Ste. Marie*, [1978] 2 S.C.R. 1299 where the Supreme Court of Canada held that "punishment should in general not be inflicted on those without fault." Furthermore:

1. s. 106 is a detailed statutory scheme regarding seatbelts and does not specify the level of fault required.

2. "[I]t is not impossible to imagine situations where a driver finds him or herself not securely seat belted despite having taken reasonable steps to secure the belt."

3. Just because a s. 106(2) offence involves a simple act entirely within the control of the driver, it is quite possible that a driver could take reasonable steps to fasten his or her seat belt only to find that the belt did not close properly or had come undone. Although the defence of due diligence will be rare, the small chance of success should not deprive the driver of the opportunity to present it.

4. The presence of statutory exceptions to wearing a seatbelt - driving in reverse, medical reasons or work-related need - did not have any bearing on the classification of the offence. "The exceptions exclude the prosecution of certain individuals who have very specific needs and reasons not to wear a seat belt," said Justice Sharpe. "The exceptions neither arise from nor relate to the concept of due diligence."

In conclusion, the Court of Appeal noted that a due diligence defence will not be established by acting generally in a reasonable way. Rather, "a defence of due diligence to this charge would only be made out where, although the driver was found not wearing his or her seat belt when driving, the driver had taken all reasonable care to wear the seat belt."

The Crown's appeal was dismissed.

Complete case available at www.ontariocourts.on.ca

Editor's note: Additional case facts taken from *R. v. Wilson*, 2013 ONCJ 313

REASONABLE GROUNDS TO BE ASSESSED AT TIME OF ARREST

R. v. Day, 2014 NLCA 14

A police investigator received a tip from a reliable informant that the accused and his roommate possessed quantities of marihuana, cocaine and steroids for sale. The same day the investigator corroborated some of the tip's details, including the accused's and his roommate's address, the vehicles they drove and the roommate's involvement in selling drugs. The investigator also learned that a year earlier the accused had been found in possession of what was believed to be marihuana and a set of digital scales, though he had not been charged at that time. The accused's residence was placed under surveillance by police and he was seen leaving it and driving off in a black Honda Civic at 3:25 pm, a vehicle the investigator was informed he would be driving. After the accused stopped at a convenience store, a man came out of the store and got into the accused's car. The officers were unable to see what happened in the car or when exactly the man got out of it, but they saw the car drive away and followed it. The accused parked it and then entered a downtown bar.

Meanwhile, the investigator appeared before a judge, obtained a search warrant at 4:00 pm and let the surveillance officers know. About half an hour later, the surveillance officers observed the accused exit the bar with two women and walk to the Honda Civic that was parked nearby. When the accused got into the driver's seat and started the car he was confronted by police and arrested for trafficking. The women were advised that they could leave and did so. A search of the accused's person yielded two cell phones and some cash. He was cautioned, informed of his *Charter* rights and placed in the police car. When the police searched his car they found a small quantity of marihuana, a bud buster and a used marihuana pipe. Two zip lock bags, each containing one-half pound of marihuana, were found in the trunk. The accused was charged with possessing marihuana for the purpose of trafficking.

Newfoundland Provincial Court

During testimony the investigator said he waited for the warrant to issue before arresting the accused because he wanted to minimize the risk that the arrest could prompt contact with someone at the residence and result in the destruction of evidence. On cross-examination the investigator did not want to speculate as to what he would have done had the search warrant not been issued.The judge found that the accused's arrest was unlawful and that his *Charter* rights to be free from arbitrary detention (s. 9) and unreasonable search and seizure (s. 8) had been breached. In the judge's view, the police did not have the requisite subjective belief for arresting the accused because the officer could not say whether he would have ordered the arrest if the search warrant had not been issued. As well, the judge found that a reasonable person placed in the position of the police would not be able to conclude that there were reasonable grounds for the arrest. She excluded the marihuana, cell phones and drug paraphernalia from evidence under s. 24(2) of the *Charter*. As a result, the accused was acquitted.

Newfoundland Court of Appeal

The Crown appealed the accused's acquittal on the basis that the trial judge erred in ruling that the arrest was unlawful and that ss. 8 and 9 of the *Charter* were breached. In the Crown's opinion, the investigating officer ordering the arrest had the necessary subjective belief that the accused was committing or was about to commit a drug

trafficking offence and that this belief was justifiable from an objective point of view. Furthermore, the Crown contended that even if the accused's *Charter* rights were breached the judge erred in excluding the marihuana, cell phones and drug paraphernalia as evidence.

Arrest

Justice Hoegg, authoring a majority judgment, first noted that "the reasonable grounds for arresting a person without a warrant encompass both 1) a subjective belief on the part of the police that the person has committed or is about to commit an indictable offence, and 2) that the subjective belief must be 'justifiable from an objective point of view'."

Subjective Belief

The majority concluded that the officer had the requisite subjective belief. At no time did the officer say his grounds for arrest depended on the warrant being issued nor was there any evidence that his belief hinged on such a case. Justice Hoegg stated:

> [I]t is worth observing that a decision to arrest can involve more than simply having the requisite grounds. The fact that the officer may not have arrested [the accused] had the warrant not been issued does not mean that the officer's subjective belief was vitiated, or that his grounds were not objectively justifiable. The police may have a subjective belief that is objectively justifiable to arrest a person whom they choose not to arrest, and the fact that the arrest is not carried out does not mean that the police do not have the grounds. [para. 25]

"The police may have a subjective belief that is objectively justifiable to arrest a person whom they choose not to arrest, and the fact that the arrest is not carried out does not mean that the police do not have the grounds."

The investigator's subjective belief for the arrest was what he personally believed at the time it was made. What the investigator's belief might have been in a different set of circumstances was irrelevant to what he believed at that time. Here, the judge focussed on the investigator's answers to hypothetical questions respecting the warrant not being issued. Since there was no evidence linking the investigator's belief in grounds for arrest to the warrant being issued, the evidence respecting the hypotheticals was irrelevant. It was an error in law for the trial judge to not state and apply the proper legal standard. She was required to consider only the relevant evidence respecting the investigator's subjective belief. Had she done so, the trial judge would have determined that the investigator had the requisite subjective belief. Furthermore, the trial judge also made a palpable and overriding error by inferring that the investigator lacked a subjective belief from his hesitation to answer a hypothetical question had the warrant not been issued.

Objective Grounds

Justice Hoegg found the trial judge also erred in concluding the objective test for reasonable grounds had not been met. The informant was very reliable, provided information from first hand knowledge and some of the details - like the accused's address and type of vehicle he drove - were verified. In addition, there was independently verified information that the accused had been involved with drugs on a prior occasion. Had the trial judge properly considered the correct legal principles, she would have concluded, in the totality of the circumstances, that the grounds for arresting the accused were objectively justifiable. "The tip itself provided detail beyond a bald conclusionary statement that [the accused] was trafficking in drugs, some of the details were corroborated, the reliability of Source B was very high and his or her source was first hand, and additional investigation and surveillance served to support the belief in grounds," said Justice Hoegg.

Since both the subjective and objective prongs of the reasonable grounds test had been met, the accused's arrest was lawful and he was, therefore, not arbitrarily detained under s. 9 of the *Charter*.

The Search

Under the common law doctrine of search incident to arrest, the police may search without a warrant provided (1) the arrest was lawful, (2) the search was conducted incident to the arrest for a valid purpose, and 3) the manner in which the search was carried out was reasonable. Valid purposes for conducting searches incident to arrest include protecting the police and protecting and discovering evidence related to the arrest.

In this case, the police searched the accused and his car for the purpose of discovering evidence, a valid reason for searching incident to arrest. Furthermore, the public manner of the search did not taint its reasonableness. Justice Hoegg stated:

> In my view, the time and place of the search were called for in the circumstances. There was nothing abusive about the search of [the accused] and nothing done to him or in the searching of his car that could lead to the conclusion that the search was carried out in an unreasonable manner. While respect for the privacy and dignity of accused persons is always called for, the police cannot be expected to conduct their work at times and places which are optimal from the point of view of persons involved in investigations. Accordingly, I conclude that the search was carried out in a reasonable manner.

The searches of the accused and his car were lawfully conducted incident to his arrest, and there was no s. 8 *Charter* breach. The marihuana, cell phones and drug paraphernalia were admissible as evidence.

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

A Different View

Justice Rowe, in dissent, concluded that the arresting officer did not believe he had reasonable grounds independent of the search warrant being granted. Instead, he believed he had grounds, in part, because the search warrant had been granted. Since the arresting officer couldn't say whether he would have had grounds to make the arrest in the absence of the search warrant, then the subjective prong of the test had not been made out. The inference the trial judge drew that the arresting officer did not subjectively have reasonable grounds for the arrest was logical.

As for the objective test, it too had not been met. Since the arrest was arbitrary and unlawful, a search incidental to such an arrest would also be unlawful. "The arrest of [the accused] was a clear abuse of authority, one that warrants censure by the courts," said Justice Rowe. The evidence was properly excluded according to Justice Rowe and he would have dismissed the Crown's appeal.

Complete case available at www.canlii.org

ACCUSED MUST PROVE 'REASONABLE EXCUSE' FOR REFUSING BREATH SAMPLE

R. v. Goleski, 2014 BCCA 80

After seeing a truck fail to stop at two stop signs and speed 25 km/h over the posted speed limit, the police pulled it over. The officer detected the odour of alcohol on the accused's breath. He also said "he had had a few drinks" when asked about drinking. An approved screening device (ASD) demand was made and a "fail" registered. The breathalyzer demand then followed and the accused was advised of his right to counsel. He said he would comply with the demand and that he did not want to speak with a lawyer. He was driven to the police detachment where he then twice refused to provide samples of his breath. He was charged with refusing to provide a breath sample.

British Columbia Provincial Court

At his trial the accused testified that the officer had lied about him not stopping at both stop signs. His sober passenger also supported his story that he had stopped. He said he deliberately refused the breath sample because he felt the officer was unfair and dishonest, and could not be trusted in accurately recording the breathalyzer results. The judge ruled that the onus was on the accused to establish a reasonable excuse on a balance of probabilities, which he failed to do.

The judge found all the witnesses credible, could not decide who to believe and therefore found the evidence failed to establish that is was more likely than not that the officer was lying. The accused was convicted of refusing to provide a breath sample. The judge noted, however, that had the onus been on the accused to merely raise a reasonable doubt about whether he had a reasonable excuse for refusing then such a standard had been met.

British Columbia Supreme Court

The appeal judge set aside the accused's conviction and entered an acquittal. In his view, the trial judge erred in placing the burden on the accused to prove a reasonable excuse. He concluded that the accused only need raise the question of the possibility of a reasonable excuse. Then the Crown must prove beyond a reasonable doubt the lack of a reasonable excuse.

British Columbia Court of Appeal

The Crown appealed arguing that when an accused asserts they had a reasonable excuse for failing or refusing to comply with a breath demand, the accused must prove it on a balance of probabilities. In the Crown's submission, it did not have to prove beyond a reasonable doubt the absence of a reasonable excuse. The Court of Appeal agreed. Under s. 794(2) of the *Criminal Code*, an accused who asserts that they had a reasonable excuse for failing or refusing to comply with a breathalyzer demand must prove the factual foundation for their excuse on a balance of probabilities. It is not enough for an accused to simply raise the issue of a reasonable excuse. The accused's conviction was reinstated.

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

2014 British Columbia

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The front of the coin depicts a Federal and Municipal officer standing post at the British Columbia Law Enforcement Memorial Bastion located on the grounds of the Provincial Legislature in Victoria; with the flag of British Columbia in the background.

The back of the coin depicts officers from Federal, Provincial and Municipal agencies firing a rifle salute with the Memorial Ribbon in the background. The phrase around the border is etched into the Bastion.

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&
Police & Peace Officers' Memorial Ribbon Society

Proclamation Declaring the last Sunday in September of each year to be "Police and Peace Officers' National Memorial Day"

SI/98-97

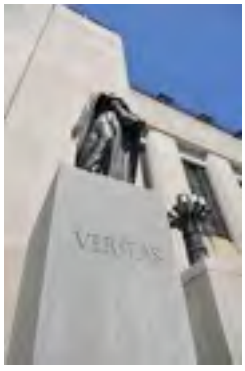
... ...

Whereas Canadian police and peace officers make valuable contributions to the safety of Canadians and it is considered appropriate that there be, in each year, a day to mark and pay tribute to the hard work, dedication and sacrifices made by Canadian police and peace officers;

Whereas memorial services are held in communities across the country on the last Sunday of September of every year to commemorate those police and peace officers who were killed in the line of duty;

And whereas, by Order in Council ... His Excellency the Governor General in Council has directed that a proclamation do issue declaring the last Sunday in September of each year to be "Police and Peace Officers' National Memorial Day"...

SUPREME COURT DECIDES CASES QUICKER



In its report "Supreme Court of Canada - Statistics 2003 to 2013" the workload of Canada's highest Court was outlined. In 2013 the Supreme Court heard 75 appeals, down from 78 in 2012. The most appeals heard annually in the last 10 years was in 2005 when 93 were brought before the Court. The lowest number of appeals heard in a single year during the last decade was 53 in 2007.

Case Life Span

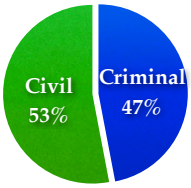
The time it takes for the Court to render a judgment from the date it hears a case dipped slightly to 6.2 months from 6.3 months in 2012. Overall it took 17.7 months, on average, for the court to render an opinion from the time an application for leave to hear a case is filed. This is down from the previous year (19.3 months). The shortest time within the last 10 years for the Court to announce its decision after hearing arguments was 4.0 months in 2004 while the longest time was 7.7 months in 2010.

Applications for Leave

In 2013 there were 529 applications for leave to appeal the decision of a lower court, meaning a party sought permission for a hearing from a three judge panel. Quebec was the source of most applications for leave at 152 cases. This was followed by Ontario (135), British Columbia (76), the Federal Court of Appeal (54), Alberta (52), Saskatchewan (18), Nova Scotia (14), Manitoba (11) Newfoundland and Labrador (7), New Brunswick (6) Prince Edward Island (3) and the Northwest Territories (1). No applications for leave came from Nunavut or the Yukon. Of the 529 leave applications, 46 or 9% were granted while 57 were pending. Of all applications for leave, 26% were criminal and 74% were civil.

Appeals Heard

Of the 75 appeals heard in 2013, Quebec had the most of any origin at 18. This was followed by Ontario with 13, British Columbia (12), the Federal Court of Appeal, Alberta and Nova Scotia (7 each), Newfoundland and Labrador (5), Saskatchewan (3), New Brunswick, Manitoba and Canada, each with one. No appeals originated from the Northwest Territories, Prince Edward Island, Yukon or Nunavut.



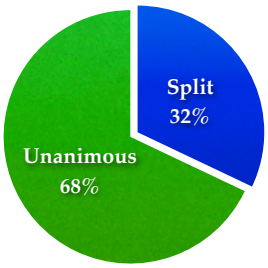
Of the appeals heard in 2013, 53% were civil while the remaining 47% were criminal. Twenty percent (20%) of the criminal cases dealt with *Charter* issues, up from 10% in 2012.

Twelve (12) of the appeals heard in 2013 were as of right. This source of appeal includes cases where there is a dissent on a point of law in a provincial court of appeal.

The remaining 63 cases had leave to appeal granted.

Appeal Judgments

There were 78 appeal judgments released in 2013, down from 83 the previous year. Only nine decisions were delivered from the bench last year while the remaining 69 were delivered after being reserved. Thirty-nine (39) appeals were allowed while 39 were dismissed. In terms of unanimity, the Supreme Court agreed on 68% of its cases. This is down slightly from 72% the previous year. For the remaining 32% of its judgments released in 2013 the Court was split.



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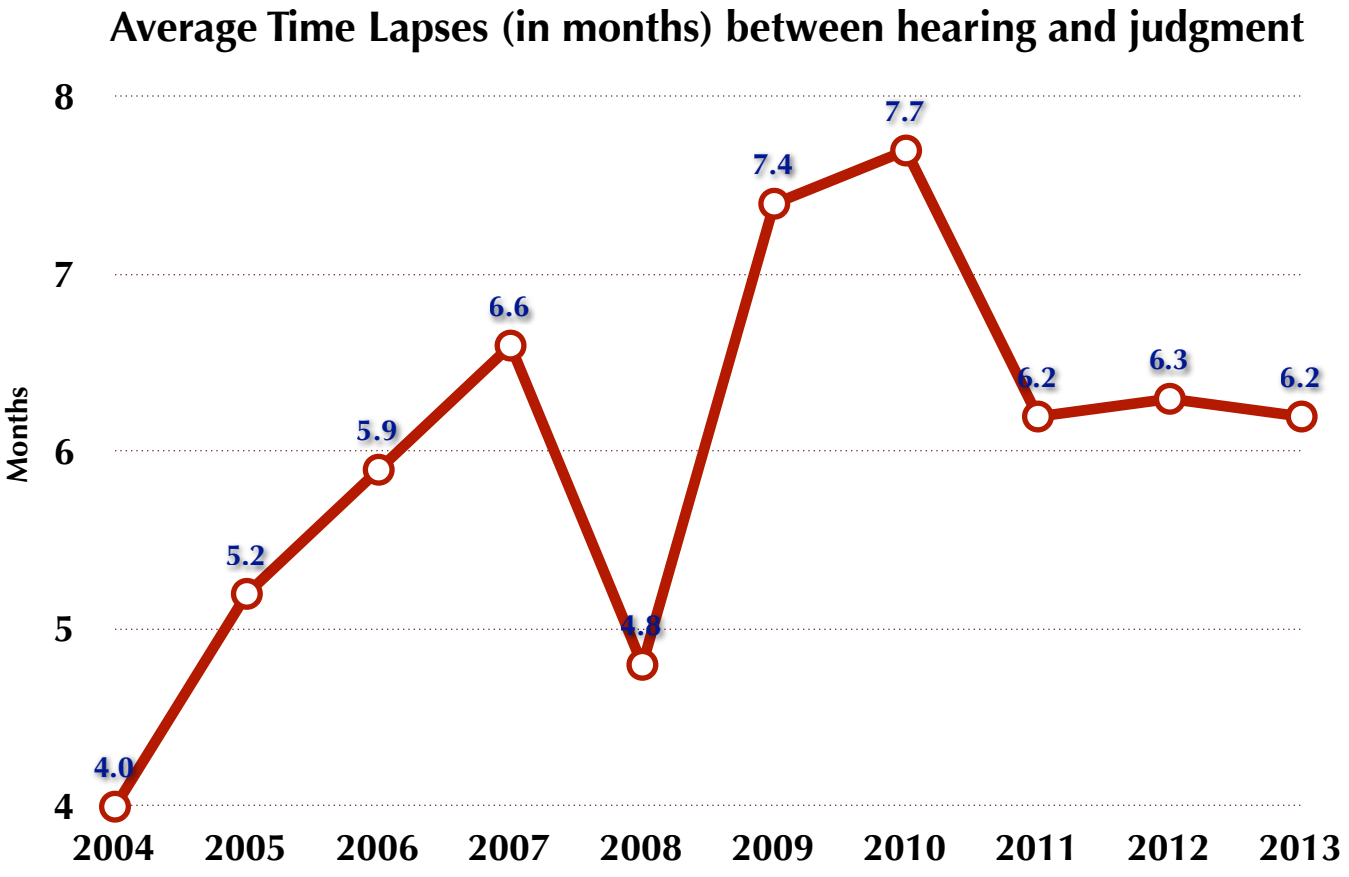

NEW DEGREE ADDRESSES GROWING COMPLEXITY IN POLICING

The Justice Institute of British Columbia (JIBC) is accepting applications for its new **Bachelor of Law Enforcement Studies** (BLES) program that gives prospective recruits a competitive edge by providing the complex skills needed in today's police officers.

"***The program is the first of its kind in Western Canada***," said Mike Trump, Dean of the School of Criminal Justice and Security at the JIBC. "***It was developed to provide the latest techniques and necessary skills to deal with the growing sophistication of crime and the increasing complexity of policing***."

One only has to look at some recent cases in B.C. like the 2011 Stanley Cup Riot to discover how complex policing has become. The Integrated Riot Investigation Team, made up of members from the Lower Mainland's police forces, forensically processed more than 5,000 hours of video and thousands of individual photos to identify and charge nearly 300 suspected rioters to date.

"Forensically processing evidence involves knowing how to protect evidence from contamination and to ensure that any collection of evidence will withstand the most stringent criminal court proceedings," said Steve McCartney, coordinator for the Law Enforcement Studies Diploma and the Bachelor of Law Enforcement Studies.

"Policing today is more complex on so many different levels. It's no longer just responding to calls," he said. "Police officers today have to know how to comprehend massive amounts of information and they need to know how to write and organize reports and affidavits that are necessary to secure charges."

Learning how to properly conduct forensic investigations, handle firearms, and drive emergency vehicles are just some of the essential skills prospective police recruits learn through JIBC's law enforcement program. It begins with a two-year **Law Enforcement Studies Diploma** (LESD), which can ladder into the BLES program.

Graduates of the LESD program and students from other post-secondary institutions with a criminal justice or criminology diploma are invited to apply for the new bachelor's degree. If they meet the admission requirements, their credits can be transferred and students can continue their education in the third year of the BLES program.

Third and fourth year courses develop a candidate's leadership, critical thinking and ethical decision-making skills and provides a background in areas including business, human resources, research and labour law issues.

McCartney noted that more than half of the recruits hired by local police departments and trained at B.C.'s Police Academy have a bachelor's degree.

"***Completion of the degree provides a competitive edge for people looking to be hired as police officers, sheriffs, correctional officers, and a number of other law enforcement careers***," said McCartney. "***It also provides career flexibility by providing the skills and knowledge needed in a wide range of other public safety professions***."

The application deadline for the **Bachelor of Law Enforcement Studies** is April 30, 2014.

For more information, visit www.jibc.ca/bles or send an email to bles@jibc.ca.

About the Justice Institute of British Columbia

The Justice Institute of British Columbia is Canada's leading public safety educator. Their specialized programs lead to certificates, diplomas, bachelor's degrees and graduate certificates in Policing, Investigations, Emergency Management, Firefighting, Paramedicine, Sheriffs, Corrections, Counselling, Leadership, Mediation, Conflict Resolution, and Driver Training. The JIBC also provides customized contract training to domestic and international governments, agencies and organizations. Their approach to education emphasizes applied learning and realistic simulations, delivered by instructors who are experienced practitioners. Each year, approximately 30,000 students study at the JIBC. Their work makes communities safer, and helps people in need, throughout B.C., across Canada and around the world.

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