JUSTICE INSTITUTE of BRITISH COLUMBIA

IN SERVICE: 10-8

A PEER READ PUBLICATION

A newsletter devoted to operational police officers in Canada.

IN MEMORIAM

On March 7, 2017, 42-year-old Royal Canadian Mounted Police Constable Richer Dubuc died as a result of injuries sustained in a motor vehicle crash the previous day in Saint-Bernard-de-Lacolle, Quebec. He had been responding to a call when his patrol car collided with a tractor that was driving on the highway. Constable Dubuc was transported to a hospital where he succumbed to his injuries.

Constable Dubuc had served with the Royal Canadian Mounted Police for seven years and was assigned to the Integrated Border Enforcement Team. He is survived by his wife and four children.

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

"As a police officer, his greatest ability was how he was able to relate to everyone he encountered."

RCMP Superintendent Paul Beauchesne

"They are our heroes. We shall not forget them."

inscription, Canadian Police And Peace Officer's Memorial

Highlights In This Issue

NEW JIBC Graduate Certificate in Public Safety Leadership

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Upcoming Courses

Advanced Police Training

Advanced training provides opportunities for skill development and career enhancement for police officers. Training is offered in the areas of investigation, patrol operations and leadership for in-service municipal and RCMP police officers.

JIBC Police Academy

See Course List here.

Canadian Police & Peace Officers'

40th Annual Memorial Service

September 24, 2017
Parliament Hill
Ottawa, Ontario

see page 31

Note-able Quote

"It was not the mountain that we conquered, it was ourselves."

- Sir Edmund Hillary

Graduate Certificates

Intelligence Analysis
or
Tactical Criminal Analysis
www.jibc.ca

see pages 39-40

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 recent acquisitions which may be of interest to police.

Blindspot: hidden biases of good people.
Mahzarin R. Banaji & Anthony G. Greenwald.
New York, NY: Delacorte Press, 2013.
BF 575 P9 B25 2013

The confidence game: why we fall for it ... every time.
Maria Konnikova.
New York, NY: Viking, 2016.
HV 6691 K66 2016

Digital copyright law.
Cameron Hutchison.
Toronto, ON: Irwin Law, 2016.
KE 2799 H88 2016

The end of average: how we succeed in a world that values sameness.
Todd Rose.
Toronto, ON: HarperCollins, 2016.
BF 637 S8 R67 2016

Face recognition: the effects of race, gender, age and species.
Edited by James Tanaka.
Abingdon, Oxon: Routledge, 2015.
BF 242 T36 2015

Kirkpatrick's four levels of training evaluation.
James D. Kirkpatrick & Wendy Kayser Kirkpatrick.
Alexandria, VA: ATD Press, 2016.
HF 5549.5 T7 K57 2016

The multicultural mind: unleashing the hidden force for innovation in your organization.
David C. Thomas.
Oakland, CA: Berrett-Koehler Publishers, a BK Business book, 2016.
HF 5549.5 M5 T46 2016

Never split the difference: negotiating as if your life depended on it.
Chris Voss with Tahl Raz.
London, UK: RH Business Books, 2016.
BF 637 N4 V67 2016

Psychiatry made ridiculously simple.
By Jefferson E. Nelson, William V. Good, Michael S. Ascher; art by Don P. Bridge.
Miami, FL: MedMaster, Inc., 2016.
RC 454 N45 2016

Rapid instructional design: learning ID fast and right.
George M. Piskurich.
Hoboken, NJ: Wiley, 2015.
LB 1028.38 P57 2015

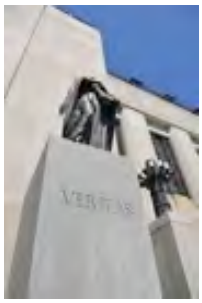
The skilled facilitator: a comprehensive resource for consultants, facilitators, managers, trainers, and coaches.
Roger M. Schwarz.
Hoboken, NJ: John Wiley & Sons, Inc., 2017.
HD 30.3 S373 2017

Stragility: excelling at strategic changes.
Ellen R. Auster & Lisa Hillenbrand.
Toronto, ON: University of Toronto Press, 2016.
HD 58.8 A899 2016

That's not how we do it here!: a story about how organizations rise, fall--and can rise again.
John Kotter & Holger Rathgeber.
New York, NY: Portfolio/Penguin, [2016]
HD 58.8 K673 2016

Violent no more: helping men end domestic abuse.
Michael Paymar; foreword by Anne Ganley.
Nashville, TN: Hunter House Incorporated, 2015.
RC 569.5 F3 P38 2015

SUPREME COURT QUICKER IN DECIDING CASES



In its report, ***"Supreme Court of Canada - Statistics 2006 to 2016"***, the workload of Canada's highest Court was outlined. In 2016 the Supreme Court heard 63 appeals. This was the same number as it heard in 2015. The most appeals heard annually in the last 10 years was in 2008 when 82 cases 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

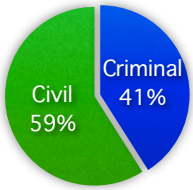
The time it takes for the Court to render a judgment from the date it hears a case was 4.8 months, down one month from 2015. The shortest time within the last 10 years for the Court to announce its decision after hearing arguments was 4.1 months (2014) while the longest time was 7.7 months (2010). Overall it took 16.3 months, on average, for the Court to render an opinion from the time an application for leave to hear a case was filed. This is down from the previous year's statistics when it took 17.2 months.

Applications for Leave

In 2016 there were 598 applications for leave, meaning a party sought permission to appeal the decision of a lower court. Ontario was the source of most applications for leave at 175 cases. This was followed by Quebec (134), the Federal Court of Appeal (97), British Columbia (76), Alberta (45), Saskatchewan (20), Manitoba (16), New Brunswick and Nova Scotia at 13 each, Newfoundland and Labrador (4), the Yukon (3), and Prince Edward Island and Nunavut each with one (1). No applications for leave came from the Northwest Territories. Of the 598 leave applications, 48 or 8% were granted while 84 were pending. Of all applications for leave, 25% were criminal and 75% were civil.

Appeals Heard

Of the 63 appeals heard in 2016, British Columbia had the most of any province at 17. This was followed by Alberta with 15, Quebec (12), the Federal Court of Appeal (8) and Ontario (6). New Brunswick, Nova Scotia, Manitoba, Saskatchewan, and Newfoundland and Labrador each had one appeal heard. No appeals originated from the Yukon, Northwest Territories, Prince Edward Island or Nunavut.

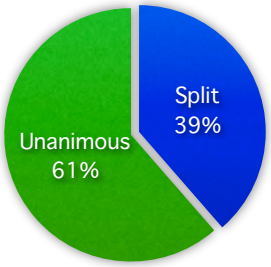


Of the appeals heard in 2016, 59% were civil while the remaining 41% were criminal. Eighteen percent (18%) of the criminal cases dealt with *Charter* issues.

Fifteen (15) of the appeals heard in 2016 were as of right. This source of appeal includes cases where there was a dissent on a point of law in a provincial court of appeal. The remaining 48 cases had leave to appeal granted.

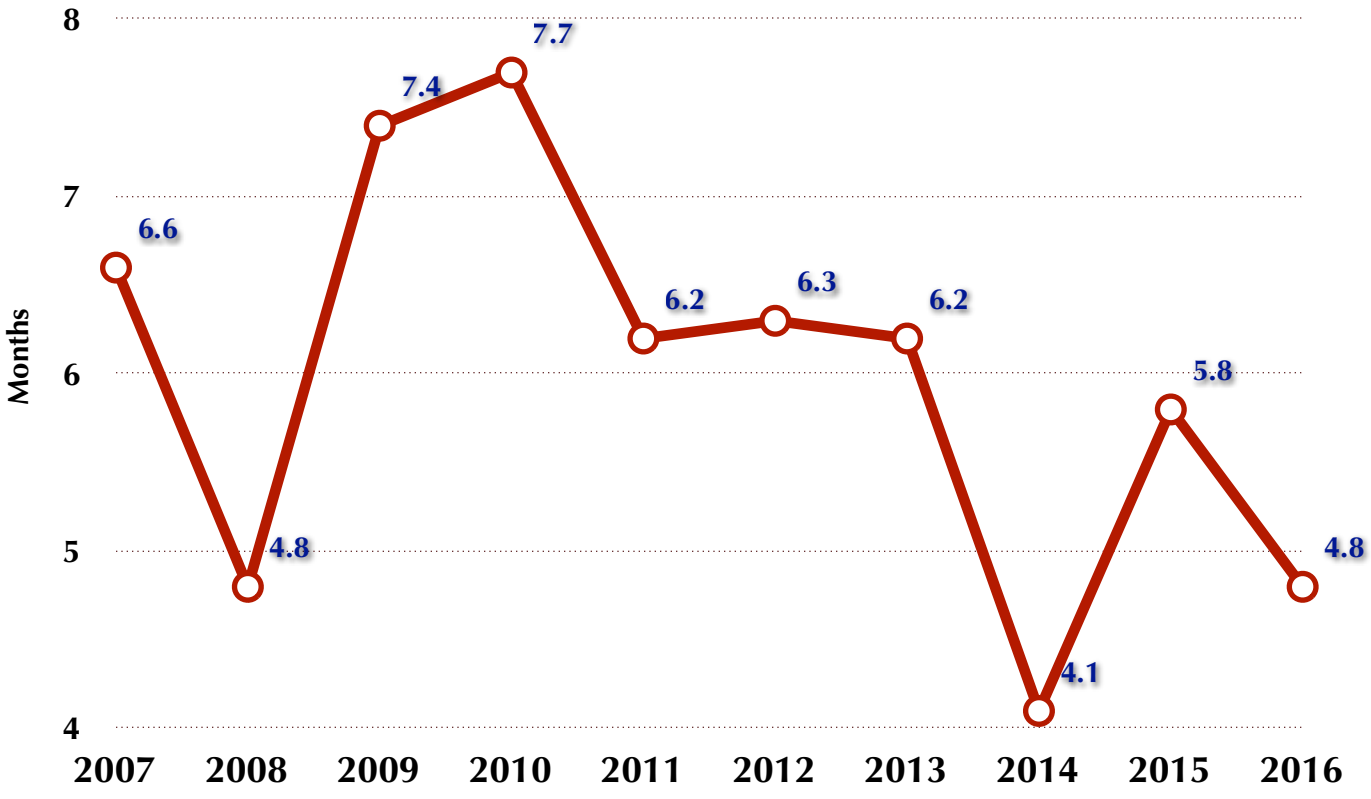
Appeal Judgments

There were 57 appeal judgments released in 2016, down from 74 the previous year. Thirteen (13) decisions were delivered from the bench last year while the remaining 44 were delivered after being reserved. Twenty-nine (29) appeals were allowed while 28 were dismissed. In terms of unanimity, the Supreme Court agreed on 61% of its cases. This is down from 70% the previous year. For the remaining 39% of its judgments released in 2016 the Court was split. This is the lowest percentage of unanimity in the last 10 years.

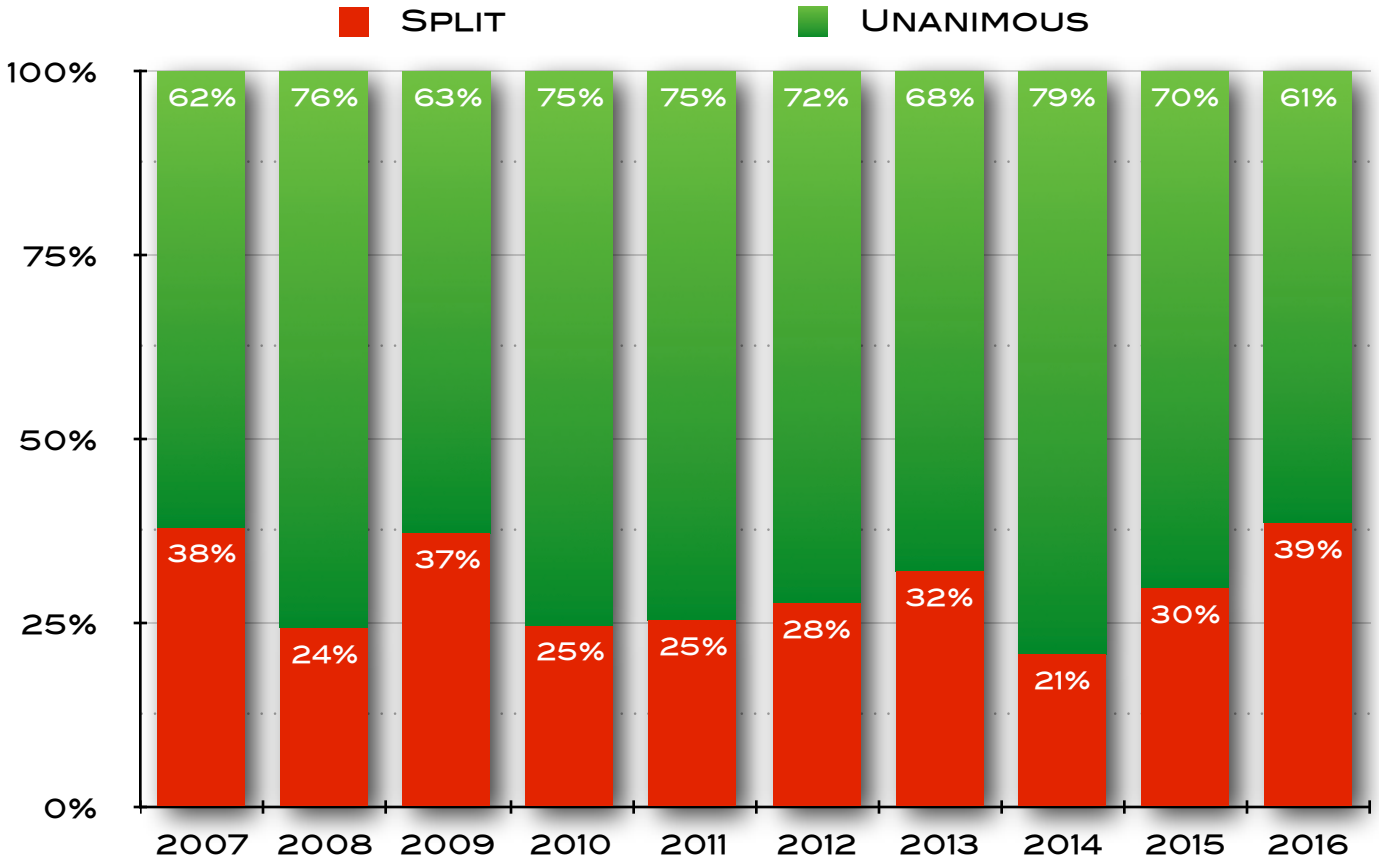


Source: www.scc-csc.gc.ca

Average Time Lapses (in months) between SCC hearing and judgment



SUPREME COURT OF CANADA DECISIONS: SPLIT v. UNANIMOUS



CHARTER TURNS 35

The Canadian *Charter of Rights and Freedoms* became law on **April 17, 1982**. That was 35 years ago. Since then, courts across Canada have interpreted and applied the *Charter*. In doing so, courts have told the government and its actors (including the police) the limits of their powers when the exercise of those powers intersect with individual rights. This is no easy task. And not everyone agrees on the law. Just look at the statistics above showing that judges of Canada's highest court did not agree in almost four out of ten cases they heard last year.

Equally, if not more, difficult is applying these interpretations and the rules that develop to ever changing facts. But that is exactly what the police must do. Often, the police must take these constitutional notions and principles, such as the right to privacy protected in s. 8 of the *Charter*, and apply them to daily reality, with little time for reflection, second opinion or timeouts.

It has been said that "Doctors bury their mistakes while lawyers send theirs to prison. Police officers do a little of both." That is because police officers make decisions everyday where errors can be costly. If the police screw up, cases, careers and even lives can be at stake. That is why training and education is key.

"In Service: 10-8" is now entering its 17th year of publication. We salute all of our readers and thank them for all that they do in protecting the public and maintaining law and order in this great nation we call Canada.

OFFICER ENTITLED TO INFER TRAFFICKING ON TOTALITY OF CIRCUMSTANCES

R. v. Alexander, 2017 ONCA 181

Police set up surveillance at the home of a known drug user. As a result of this surveillance, the police observed a vehicle driven by the accused make three stops at three different locations in a 15-minute period. At the first stop the known drug user was observed briefly getting into the passenger side of the vehicle and exiting it shortly thereafter. At the second stop, about a minute after the vehicle had arrived, the accused was observed leaving the front of the residence of known drug users and re-entering the vehicle. At the third stop, a man got into the passenger side of the vehicle for a short period of time and then exited. After the third stop, the accused was pulled over by police and arrested. He had 17 individually wrapped baggies of crack cocaine totalling 8.3 grams in his jacket pocket. Various amounts of money were also found on the accused as well as in his vehicle. He was charged with possessing crack cocaine for the purpose of trafficking.

Ontario Superior Court of Justice

The accused argued that his rights under ss. 8 and 9 of the *Charter* had been breached based on his warrantless arrest and search. In his view, the evidence was inadmissible under s. 24(2). The main issue was whether the police had reasonable and probable grounds on which to base their arrest and the legality of the subsequent searches of his person and vehicle.

The judge noted that the accused's arrest required reasonable and probable grounds, nothing more. In this case, the road boss ordered the arrest. Therefore, he would need reasonable and probable grounds based on the totality of the circumstances. "Looking at the totality of these facts, I am satisfied that the officers had more than reasonable and probable grounds to believe that [the accused] had committed the offence of trafficking in drugs and effected an arrest on that basis," said the judge. "In view of the rapidity of the covert contacts made in this very short investigation, I am satisfied that the single most likely explanation for [the accused's] series of interactions with others, none of which lasted very long but two of which were in the car in the front of the vehicle part, is that these were drug transactions." Since the arrest was lawful the police were authorized to search the accused and his vehicle as an incident to arrest. The accused was convicted of possessing cocaine for the purpose of trafficking and he was sentenced to 18 months in prison less time served.

MORE ABOUT THE STOPS

STOP 1 (5:17 pm): A silver Acura attended at a known drug user's residence. The known drug user was seen enter the vehicle and stayed in it for about 10 seconds. A surveillance officer said he believed the driver of the Acura to be the accused, but did not clearly identify him until the second stop. The vehicle left the known drug users residence and was surveilled by police.

STOP 2 (5:19 pm): The Acura attended another residence, also associated to drug users. Another surveillance officer identified the accused as the driver and lone occupant of the Acura. The accused was seen walking away for the front door of the residence towards his car which left about one minute later.

STOP 3 (5:31 pm): Police followed the vehicle to a third residence arriving. The accused remained in the vehicle and a white male got into its passenger side and was in the vehicle for a very short time. The accused left the residence in his vehicle at 5:32 pm.

ARREST (5:38 pm): The accused was pulled over and arrested.

Ontario Court of Appeal

The accused maintained that his arrest was unlawful and, therefore, the items seized in the search should have been excluded under s. 24(2). He again argued that the police did not have the requisite grounds to arrest him because the grounds provided were not objectively reasonable. He submitted that the judge erred in finding that:

1. It was reasonable for the arresting officer to have proceeded on the basis that the accused had been the driver of the vehicle at all three locations;

2. There was an interaction with the accused and another person at the second location; and

3. At the time of the arrest, the arresting officer had knowledge that the resident at the second location was associated with drug activities.

The Court of Appeal, however, rejected the accused's submission:

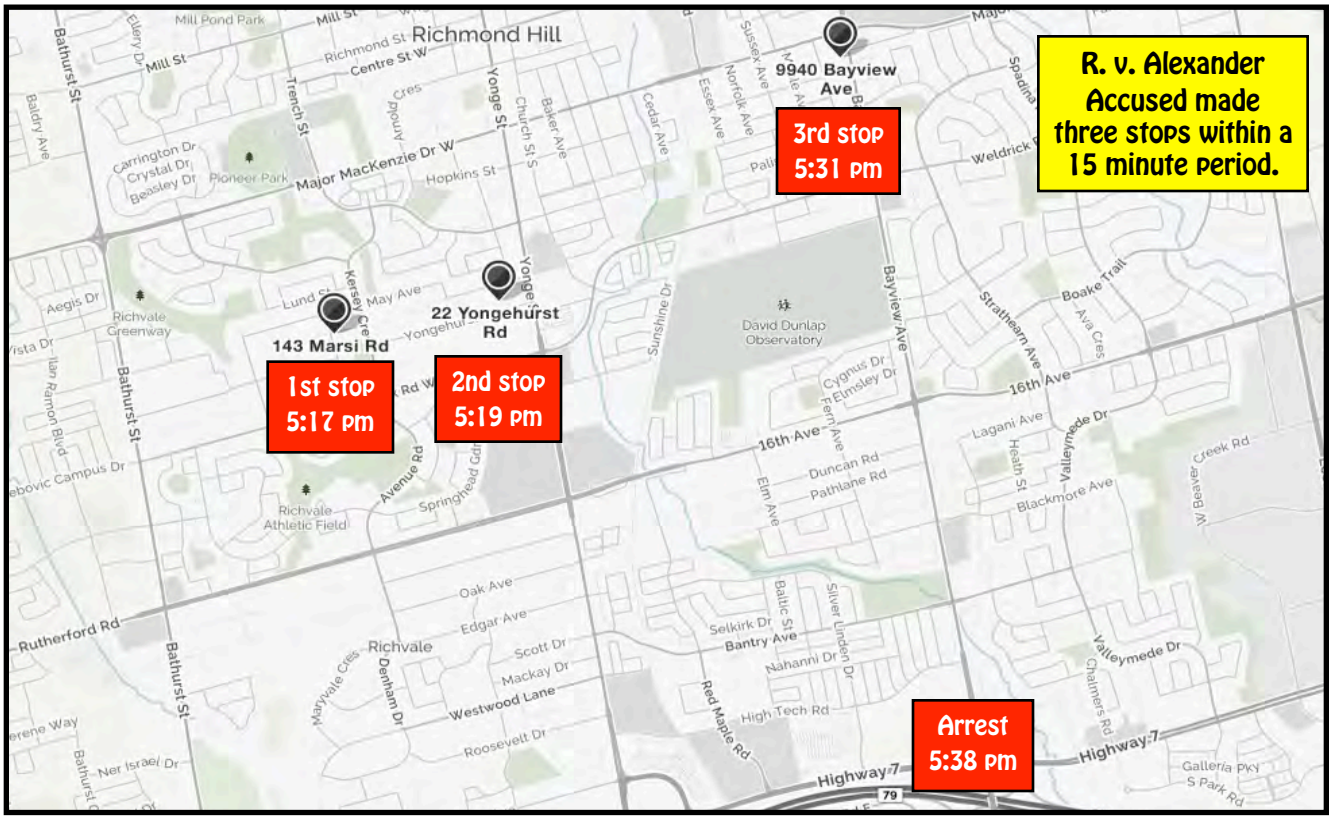
> The trial judge was well aware of the gaps in the police officer's observations of the [accused's] activities. He did not err in his assessment of the evidence. When viewed as a whole, the evidence supports the inferences drawn by the officer with respect to these three alleged misapprehensions. [para. 10]

Furthermore, the trial judge provided a comprehensive summary of the surveillance conducted and articulated clear and cogent reasons for the conclusion that, both objectively and subjectively, the arresting officer had reasonable and probable grounds to believe that the offence of trafficking was occurring.

The accused's appeal was dismissed.

Complete case available at www.ontariocourts.ca

Editor's note: Additional facts taken from *R. v. Alexander*, [2014] O.J. No. 6655 (ONSC).



OFFICER DECIDING ARREST MUST HAVE REASONABLE GROUNDS

R. v. Quilop, 2017 ABCA 70

In March or April of 2011 the police received information from an anonymous informer that the accused was involved in cocaine trafficking. The informer provided no details, nor was there any evidence with respect to the credibility of the informer or whether the informer had provided reliable information in the past. Further, there was no evidence about the reliability of the information or whether the information was first-hand or hearsay. Nevertheless, the police placed the accused under surveillance.

On April 11, 2011, the accused was seen entering the apartment of a suspected drug trafficker. The police then saw the accused walking outside the apartment building and get into a Lexus. A minute later he got out of the Lexus and ran down the street to a nearby law office. There was no evidence of what occurred in the Lexus or even if anybody else was in the vehicle.

On April 12, 2011, the accused and a female companion were observed exiting the apartment building of the suspected drug trafficker and then drove to a residential address where they parked. A man came out of the residence and entered the accused's vehicle, exiting two minutes later with an object in his hand the size of a baseball. About an hour later the police observed the accused parking his vehicle near an apartment complex. He was seen entering the apartment building carrying a 4" by 2" pouch. Six minutes later he exited the apartment building with the pouch in his possession.

The lead investigator decided that the accused should be arrested. He told his commanding officer who then directed the arrest be made. The accused was arrested in the parking lot of a shopping centre. He was searched and about $10 in change and a cellphone were found on him. A search of his vehicle turned up three more cellphones, 271.2 grams of cocaine, $3,500 in cash and baggies.

WHY THE POLICE SUSPECTED DRUG TRAFFICKING

The suspicion about the other person, associated with the accused, being a drug trafficker was based on anonymous tipster information provided in 2010. However, there was no evidence with respect to the reliability of this information nor the credibility of the informer, and there was no evidence that this other person was ever charged with trafficking in drugs or that he had been convicted in the past of trafficking in drugs. In fact, a Provincial Court Judge had recently denied a police request for a warrant to search the apartment of this other person. A database search only revealed that "years earlier" the accused had been in the same vehicle as this other person.

Alberta Court of Queen's Bench

Police testified that it was their opinion that the two surveillance observations made on April 12 were of "behaviour consistent with drug trafficking", while they conceded the April 11 surveillance observation was not consistent with drug trafficking.

The accused argued his arrest was arbitrary under s. 9 of the *Charter*, and the resulting search and seizure were unreasonable under s. 8, because the police did not have reasonable grounds to make the arrest. He sought the exclusion of evidence (the drugs, money and cellphones) under s. 24(2). In his view, the arresting officer was the person needing the necessary reasonable grounds to make the arrest and could not rely on the unknown information of other officer's. And, he contended, even if additional information the arresting officer was unaware of could be used as grounds, the grounds for arrest were still not objectively reasonable.

The judge found the arrest lawful. In his opinion, only the lead investigator making the decision to arrest needed the necessary grounds to do so, both subjectively and objectively. "I find in the case

"There are two fundamental requirements for a lawful arrest. The first requirement is fairly straightforward. The peace officer who arrests a person or the peace officer or who decides and directs than a person ought to be arrested must subjectively believe that the person to be arrested has committed or is about to commit an indictable offence. The second part of the test is not so straightforward. The grounds upon which the peace officer arrests the person must be objectively justifiable in the sense that a reasonable person in the position of the peace officer, with all of his or her training and experience, must also be able to come to the conclusion that there were reasonable grounds for the arrest or detention."

against [the accused] that few if any of the individual factual elements would give rise to objectively justifiable grounds for his arrest," said the judge. "Taken together cumulatively and viewed through the lens of a reasonable person with [the investigating officer's] experience, they do." Since the arrest was lawful and not arbitrary, the police were entitled to search the accused's vehicle as an incident to the arrest and the resulting searches and seizures did not breach s. 8. And, even if there were *Charter* breaches, the evidence was not inadmissible under s. 24(2). The accused was convicted of possessing cocaine for the purpose of trafficking and possessing proceeds of crime.

Alberta Court of Appeal

The accused challenged the trial judge's finding that the police had the necessary reasonable grounds for arrest. In his view, the commanding officer directed the arrest (not the lead investigator) and therefore the commander needed the grounds to make it. As well, he submitted that the police lacked objective reasonable grounds for the arrest.

Which Officer Needs Reasonable Grounds?

Before determining which officer must have reasonable grounds, the Court of Appeal outlined the elements of a lawful arrest:

> Section 495(1)(a) of the Criminal Code states that a peace officer may arrest without warrant a person, who, on reasonable grounds, he believes has committed or is about to commit an indictable offence (in this case, unlawfully possessing a controlled substance for the purposes of trafficking). [para. 3]
>
> There are two fundamental requirements for a lawful arrest. The first requirement is fairly straightforward. The peace officer who arrests a person or the peace officer or who decides and directs than a person ought to be arrested must subjectively believe that the person to be arrested has committed or is about to commit an indictable offence. The second part of the test is not so straightforward. The grounds upon which the peace officer arrests the person must be objectively justifiable in the sense that a reasonable person in the position of the peace officer, with all of his or her training and experience, must also be able to come to the conclusion that there were reasonable grounds for the arrest or detention. …
>
> The Criminal Code requirement that there be reasonable grounds for the peace officer's belief that an offence has been or about to be committed is designed to protect the liberty of the subject from arbitrary arrest. But like all "reasonable person" tests, reasonable persons can disagree on what is reasonable. And although section 495(1)(a) of the Criminal Code provides that a peace officer may arrest a person whom he believes has committed or is about to commit an indictable offence, the peace officer's belief is not determinative. The

"It is the peace officer who decides that an arrest be made who must have reasonable and probable grounds, even if that officer does not perform the actual arrest."

> grounds for the peace officer's belief are accorded some deference; but in order for a determination to be made as to whether the citizen's Charter right not to be arbitrarily detained has been infringed, the court's function is to review the reasonableness of the peace officer's belief when that belief is questioned. Appellate courts scrutinize not only the peace officer's grounds for the arrest but also the lower court's view of those grounds. [paras. 9-10]

In this case, the Crown conceded that the commanding officer did not have reasonable grounds to direct the arrest. Nevertheless, the Court of Appeal agreed with the trial judge that the lead investigator was the one actually deciding that the arrest should be made, even though the commanding officer could have vetoed the decision. "It is the peace officer who decides that an arrest be made who must have reasonable and probable grounds, even if that officer does not perform the actual arrest," said the Court of Appeal. "The ability of the commanding officer to countermand that decision did not alter the fact that it was the lead investigator who made the decision to arrest." The Appeal Court added:

> [W]here the grounds for the arrest are based on the observations of many peace officers, the focus must be on the peace officer who made the decision to arrest. If prior to the arrest one or more of the peace officers involved in the surveillance had a properly grounded belief; and if the fact of that properly grounded belief was communicated to the peace officers who made the arrest, even if the particulars of the grounds were not communicated, the arrest was lawful. [para. 20]

Did Reasonable Grounds Exist?

In this case, the trial judge had found that few, if any, of the individual surveillance observations would give rise to objectively justifiable grounds for the arrest. However, when considered in their totality, the trial judge held that the arrest for cocaine possession for the purposes of trafficking was objectively reasonable. But the Court of Appeal disagreed with this analysis.

The surveillance observations said to be consistent with drug offences were consistent with lawful behaviour and could not objectively suggest the accused had committed or was about to commit an indictable offence:

> The surveillance information consisted of three observations over two days and only two of the observations were said by police to be consistent with illegal drug activity. The observations were of extremely short duration. They took place in a matter of minutes. Not much was observed. There was no evidence of the [accused] using a cellphone. There was no observation of a hand-to-hand exchange. There was no evidence that anything transpired in the residence or the vehicles the [accused] was observed to have entered and exited. Furthermore, there was nothing connecting the persons the [accused] met or the residence he visited to known drug dealers. And there was no evidence of evasive or counter-surveillance tactics by the [accused].
>
> The Crown argued that it would be difficult to imagine an innocent explanation for what the police observed. We disagree. People buying and selling items online, from small collectibles to hockey tickets, for example, often conduct transactions in their homes or cars or on the street. And such transactions can be extremely brief where the parties have previously agreed on price or where the transaction is conditional upon a cursory inspection by the buyer. [paras. 31-32]

"The police simply suspected drug trafficking. Mere suspicion cannot justify an arrest."

"The police simply suspected drug trafficking," said the Court of Appeal. "Mere suspicion cannot justify an arrest":

> Only evidence which indicates the [accused] might be committing the indictable offence of possessing a controlled substance for the purposes of trafficking could ground a credible probability that the [accused] was committing or was about to commit the offence. Other evidence which provides context for the inculpatory evidence may be part of the so called constellation of facts which may indicate a credibly-based probability, but that other evidence, in and of itself, cannot form the basis for objectively justifiable grounds for arrest. It is correct, as the Crown argues, that a constellation of facts may indicate something completely different from the individual facts of which the constellation is comprised. And it is the entire constellation of facts which must be considered. But here that constellation did not indicate a credibly-based probability that an indictable offence had been committed.
>
> The only evidence which directly supported a credibly-based probability that the [accused] was committing the offence was the hearsay evidence of the anonymous informant that the [accused] was dealing in drugs. That evidence, together with the evidence of behaviour which may have indicated some form of in-person commercial transactions (although even the commerciality of the observed encounters was not clear) might have formed the basis of credibly-based probability but for the fact that the informant evidence did not meet the test for relying on such evidence … . The informant's information amounted to no more than an assertion without any basis to assess its reliability. There were no details provided by the informant which might have been checked out or corroborated by independent investigation. The fact that the informant's information ultimately proved to be correct did not constitute corroboration. The corroboration which permits reliance on an anonymous informant's evidence must be identified prior to arrest, not after. As previously indicated, no evidence was adduced with respect to reliability of the informant or the information which he or she provided in the past. Given the frailties of this informant's information, the focus must be on what the police actually observed. [reference omitted, paras. 28-29]

Was the Vehicle Search Lawful?

Since the police lacked the necessary reasonable grounds for the accused's arrest, his arrest was unlawful and therefore arbitrary under s. 9 of the *Charter*. As a consequence, the search of the vehicle was not a search incidental to a lawful arrest and breached s. 8.

Was the Evidence Admissible?

The Court of Appeal, contrary to the trial judge's ruling, found the evidence to be inadmissible under s. 24(2). The seriousness of the state conduct and its impact on the *Charter*-protected interests of the accused did not offset the public's interest in a trial on the merits.

The accused's appeal was allowed, the evidence was excluded and acquittals to all charges were entered.

Complete case available at www.canlii.org

Editor's note: Additional facts taken from *R. v. Basanez & Quilop*, 2014 ABQB 348.

BY THE BOOK:

Power of Arrest: ***Criminal Code***

s. 495 (1) A peace officer may arrest without warrant

(a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;

(b) a person whom he finds committing a criminal offence;

[...]

'EXIGENT CIRCUMSTANCES' MORE THAN CONVENIENCE, PROPITIOUSNESS or ECONOMY

R. v. Paterson, 2017 SCC 15

Police responded to a 911 call from a woman, crying and apparently injured. Authorities spoke to the caller's mother who told police that she thought her daughter was with her boyfriend, the accused, who lived in a nearby apartment. The mother also said the accused possibly had a shotgun. The police went to the apartment building and learned that the daughter had been transported by ambulance to the hospital with unknown injuries. The police attended the accused's apartment, knocked several times and announced "police". The door was eventually opened by the accused.

As soon as the door opened, an officer smelled a fairly strong odour of raw and smoked marihuana. Police questioned the accused about the 911 call and were satisfied that no one else needed assistance. When questioned about the marihuana smell, the accused denied its source but then admitted that he still had some "roaches" lying around. The police decided to seize the marihuana and "be on their way" without charging the accused with drug offences - a **no case seizure**. The accused agreed to hand over the "roaches" but attempted to close the door. An officer used his foot to prevent the door from closing. He feared that the accused would destroy evidence and was concerned for officer safety (the possible shotgun).

Police followed the accused into the residence. The accused picked up a baggie containing roaches on the kitchen counter to give to police. The officer then saw a bullet-proof vest on a couch, a handgun on an end table and a bag of pills on a speaker stand. The accused was immediately arrested and searched. A Blackberry cellphone and $4,655 in cash were found on his person. The premises was "cleared" for officer safety purposes and two large bags of orange and blue pills (ecstasy), and a bag of crack cocaine was found on a closet shelf. The apartment was secured, the accused transported to the police station and a search warrant under the *Controlled Drugs and Substances Act* (*CDSA*) was obtained. When police attended the hospital, the injured woman said she slipped, hit the back of her head and called 911. When the search warrant was executed, three more handguns were found in a bedroom drawer as well as another bag of drugs in the kitchen. A Form 5.2 was filed by police several months after the seizure. The accused was subsequently charged with several offences.

What the police found:

- Loaded Smith & Wesson 38 special revolver.
- Loaded Ruger P85 9 mm semi-automatic pistol.
- Loaded Ruger P90 45-calibre semi-automatic pistol.
- Loaded IMI Desert Eagle 44-calibre Remington Magnum semi-automatic pistol.
- 825 grams of cocaine worth $31,200 at the wholesale level.
- 200 grams methamphetamine worth $5,850 at the wholesale level.
- 9,000 ecstasy pills worth $17,466 at the wholesale level.
- Small amount of marihuana.
- Small amount of Oxycodone.
- Bulletproof vest.
- $30,000 in cash in a box underneath the couch.

British Columbia Supreme Court

The accused argued his rights under s. 8 of the *Charter* had been violated and sought the exclusion of the evidence. In his view, the warrantless entry into his residence breached s. 8 of the *Charter* because there were no exigent circumstances within the meaning of s. 11(7) of the *CDSA* making it impracticable for the police to obtain a warrant. As well, he suggested the late filing of the Form 5.2 was itself a s. 8 *Charter* breach.

On the warrantless search issue, the judge disagreed. He concluded that the police were

"Even where exigent circumstances are present, however, they are not, on their own, sufficient to justify a warrantless search of a residence under s. 11(7). Those circumstances must render it 'impracticable' to obtain a warrant."

entitled to enter the apartment based on exigent circumstances under s. 11(7) of the *CDSA*. The judge found the police had reasonable grounds to believe that there was a quantity of marihuana in the accused's apartment and therefore grounds to obtain a search warrant. However, by reason of exigent circumstances it was impracticable to do so. The exigent circumstances resulted from the belief that the accused would likely have destroyed the evidence while a warrant was obtained since the police were not going to arrest him. The judge found the delay in filing the Form 5.2 constituted a stand alone breach of s. 8. He nevertheless admitted the evidence under s. 24(2). The accused was convicted of nine offences: possessing illicit drugs x 2, possessing illicit drugs for the purpose of trafficking x 3 and unlawfully possessing a firearm x 4. He was sentenced to four and a half years in prison, given a 10-year mandatory firearms prohibition and ordered to provide a DNA sample. All items seized, except for the money found on his person, were ordered forfeited.

British Columbia Court of Appeal

The accused appealed his convictions arguing, in part, that the trial judge erred in finding that the entry and search of his apartment was justified based on exigent circumstances. He also suggested that the trial judge failed to determine the voluntariness of the statement he made to police about the roaches in his apartment before relying on these statements in determining the lawfulness of the police entry and search.

Justice Bennett, speaking for the unanimous Court of Appeal, agreed with the trial judge that it was impracticable for the police to obtain a warrant by reason of exigent circumstances. As for proving the voluntariness of the accused's statement, the Crown was not required to do so for the statement to be used at the *voir dire*. The rationale of the common law confessions rule in proving voluntariness is to ensure reliability and trial fairness in determining guilt, which does not apply where the inquiry relates to state (mis)conduct. Furthermore, the Court of Appeal was of the view that the police should be allowed to rely on statements to justify an investigation, even where such statements are not the product of an operating mind or are otherwise involuntarily made. Finally, the judge made no error in his s. 24(2) analysis and the accused's appeal was dismissed.

Supreme Court of Canada

The accused again appealed his convictions arguing that the police entry into his apartment was not justified on the basis of exigent circumstances making it impracticable for police to obtain a warrant. He also asserted that the confessions rule did apply to the statements he made that were used for the purpose of determining the reasonableness of police conduct. All seven Supreme Court judges hearing the case agreed on the exigent circumstances and voluntariness issue, but the Court was divided on the s. 24(2) *Charter* remedy.

Exigent Circumstances & Impracticable Defined

The Supreme Court rejected the accused's submission that the definition of "exigent circumstances" found in s. 529.3(2) of the *Criminal Code* (*Feeney* provisions) defined the meaning of exigent circumstances found in s. 11 of of the *CDSA* even though they may be similar. After reviewing different cases involving exigent circumstances. Justice Brown stated:

"'[E]exigent circumstances' in s. 11(7) denotes not merely convenience, propitiousness or economy, but rather urgency, arising from circumstances calling for immediate police action to preserve evidence, officer safety or public safety."

The common theme emerging from these descriptions of "exigent circumstances" in s. 11(7) denotes not merely convenience, propitiousness or economy, but rather urgency, arising from circumstances calling for immediate police action to preserve evidence, officer safety or public safety. This threshold is affirmed by the French version of s. 11(7), which reads "l'urgence de la situation".

propitiousness - the favorable quality of strongly indicating a successful result. freedictionary.com

Even where exigent circumstances are present, however, they are not, on their own, sufficient to justify a warrantless search of a residence under s. 11(7). Those circumstances must render it "impracticable" to obtain a warrant. In this regard, I respectfully disagree with the Court of Appeal's understanding of s. 11(7) as contemplating that the impracticability of obtaining a warrant would itself comprise exigent circumstances. The text of s. 11(7) ("by reason of exigent circumstances it would be impracticable to obtain [a warrant]") makes clear that the impracticability of obtaining a warrant does not support a finding of exigent circumstances. It is the other way around: exigent circumstances must be shown to make it impracticable to obtain a warrant. In other words, "impracticability", howsoever understood, cannot justify a warrantless search under s. 11(7) on the basis that it constitutes an exigent circumstance. Rather, exigent circumstances must be shown to cause impracticability. [paras. 33-34]

BULLET POINTS

Exigent Circumstances

"Exigent circumstances" denotes urgency arising from circumstances calling for immediate police action to preserve evidence, or officer or public safety.

- means more than convenience.

Impracticability

Taking time to obtain a warrant would seriously undermine the objectives of preserving evidence, or officer or public safety.

The requirement of impracticability, however, does not mean that it would be impossible to obtain a warrant. Nor does it mean that not obtaining a warrant would be realistic or merely practical. Rather, "'impracticability' suggests a more stringent standard requiring that it is impossible in practice or unmanageable to obtain a warrant":

> ... "[I]mpracticable" within the meaning of s. 11(7) contemplates that the exigent nature of the circumstances are such that taking time to obtain a warrant would seriously undermine the objective of police action — whether it be preserving evidence, officer safety or public safety.

"[I]n order for a warrantless entry to satisfy s. 11(7), the Crown must show that the entry was compelled by urgency, calling for immediate police action to preserve evidence, officer safety or public safety. Further, this urgency must be shown to have been such that taking the time to obtain a warrant would pose serious risk to those imperatives."

> In sum, I conclude that, in order for a warrantless entry to satisfy s. 11(7), the Crown must show that the entry was compelled by urgency, calling for immediate police action to preserve evidence, officer safety or public safety. Further, this urgency must be shown to have been such that taking the time to obtain a warrant would pose serious risk to those imperatives. [paras. 36-37]

Were there Exigent Circumstances?

Having defined exigent circumstances and the meaning of impracticable, the Supreme Court found exigencies did not exist in this case such that obtaining a warrant was impracticable. Justice Brown rejected the notion that the police intention of only wanting to seize the drugs and not arrest the accused, thereby leaving him at the apartment, created exigent circumstances such that the warrantless entry was justified:

> With respect, the prospect of the [accused] destroying roaches which the police officers hoped to seize on a "no case" basis and destroy themselves, with no legal consequences to the [accused] whatsoever, did not remotely approach s. 11(7)'s threshold of exigency. No urgency compelled immediate action in order to preserve evidence. Nor, just as importantly, did the circumstances presented by the [accused's] admission to having some partially consumed roaches, coupled with the police officers' wish to seize them on a no case basis, make it impracticable to obtain a warrant. Inconvenient or impractical, perhaps. But s. 11(7) is not satisfied by mere inconvenience, but impracticability. In this case, the police had a practicable option: to arrest the [accused] and obtain a warrant to enter the residence and seize the roaches. If, as the Crown says, the situation was not serious enough to arrest and apply for a warrant, then it cannot have been serious enough to intrude into a private residence without a warrant. [para. 39]

"[C]oncern for officer safety did not drive the decision to proceed with warrantless entry; rather, warrantless entry gave rise to concern for officer safety."

BULLET POINT

Statement Voluntariness

Confessions rule does not apply to an accused's statement adduced during a Charter voir dire.

As for the safety concern arising from the possibility of the presence of a shotgun, the Supreme Court found this concern to be well-founded. However, this concern did not prompt the entry. Destruction of evidence was the basis for the entry. "In other words, concern for officer safety did not drive the decision to proceed with warrantless entry; rather, warrantless entry gave rise to concern for officer safety," said Justice Brown. "While [the officers' concern] was well-founded, it was not the basis for the decision to enter, but the result of the decision to enter. These facts, therefore, do not qualify as exigent circumstances making it impracticable to obtain a warrant, within the meaning of s. 11(7) of the CDSA."

Voluntariness

Under the common law, a statement made to a person in authority will be admissible at trial (to support a finding of guilt) only if the Crown proves that the statement was voluntary. The Supreme Court concluded that this rule does not apply to statements used for all purposes during a trial such as establishing a police officer's reasonable grounds for a search during a *Charter voir dire*. Voluntariness does not apply for the following reasons:

1. **The rationale for the confessions rule is not engaged by admitting a statement by an accused for the purpose of assessing the constitutionality of police action.** A trial and a

Charter voir dire are significantly different. A criminal trial focusses on guilt or innocence. A *Charter voir dire* focusses on whether constitutional rights were infringed and a statement admitted in this context goes only to the police officer's state of mind and conduct, and not to the ultimate reliability of the evidence in determining guilt.

2. **Other legal protections address situations where the police may be seen to coerce information from vulnerable people.** For example, coercive or abusive police tactics designed to extract information involuntary from an accused could be scrutinized under ss. 7, 8 or 9 of the *Charter* and could be possibly excluded under s. 24(2) or result in a stay of proceedings.

3. **If the confessions rule applied to statements adduced at a *Charter voir dire*, legitimate and necessary police investigative powers could be inhibited:**

> Indeed, in some instances, application of the confessions rule to statements adduced at a Charter voir dire would lead to absurdities. Police officers would be required to positively ascertain voluntariness in respect of almost every person they encounter in responding to an emergency, when receiving a 911 call or at other early points in an investigation, where it may be unclear who is a suspect and who is a mere witness. In dynamic and emergent circumstances, police officers must be permitted, within constitutional bounds, to respond and investigate with dispatch. Taken to its logical extension, the [accused's] submission would cast doubt on basic and uncontroversial police practices which are dependent upon statements made by suspects. It would stifle police investigations, compromise public safety and needlessly lengthen and complicate voir dire proceedings — all, it bears reiterating, to secure protections which ... our criminal procedure already affords accused persons. [para. 24]

Thus, the Crown was not required to prove the voluntariness of the accused's statement about the presence of the roaches in his apartment prior to the statement being admitted during the *Charter voir dire*.

Evidence Admissibility?

Although the evidence was highly reliable and essential to the Crown's case such that society's interest in adjudicating the case on its merits supported admitting the evidence found, the five member majority concluded that the evidence was inadmissible under s. 24(2). The *Charter*-infringing state conduct was sufficiently **serious** to favour exclusion. No urgency for the entry was demonstrated and a high privacy interest attaches to a person's residence. Furthermore, the impact on the accused's *Charter*-protected interests was considerable and strongly favoured exclusion of the evidence. The intrusion into one's home, with its high expectation of privacy, was **serious**. Having considered the three admissibility factors separately and together, the five member majority concluded that the admission of the evidence would bring the administration of justice into disrepute.

The accused's appeal was allowed, his convictions were set aside and acquittals were entered.

A Slightly Different View

Justices Moldaver, speaking for himself and Justice Gascon, agreed with the majority on the voluntariness issue and with the finding that the police breached s. 8 of the *Charter*. He agreed that the requirements of s. 11(7) of the *CDSA* were not satisfied such that the police could enter without a warrant:

> In an effort to clarify the law, I accept that s. 11(7) of the CDSA was not available to the police on the facts of this case. Rather, in the circumstances, the police had three options available to them. They could have (1) tried to

> obtain the [accused's] lawful consent to enter his apartment and seize the roaches; (2) arrested the [accused] and obtained a warrant to search his apartment and seize the roaches; or (3) thrown up their hands and walked away, in dereliction of their duty to seize illicit drugs, even if only to catalogue and destroy them. [para. 73]

And further:

> ... I accept that the police entry into the apartment was unlawful. To put the matter succinctly, there was no immediate risk of the roaches being destroyed that the police could not have prevented without resorting to a warrantless entry into the [accused's] apartment. In other words, exigent circumstances did not exist. In my view, the word "exigent" connotes urgency — nothing more — and there was no genuine urgency here. The police could have arrested the [accused] and obtained a warrant to search his premises. While proceeding that way would have been inconvenient and involved an intrusion of some significance on the [accused's] liberty interest — particularly when this was a "no case" seizure in which the police did not intend to charge the [accused] — inconvenience and the anticipated loss of liberty occasioned by it cannot convert non-exigent circumstances into exigent circumstances. As stated earlier, the police had three options available to them in the circumstances: (1) seek the [accused's] lawful consent to enter the apartment and seize the roaches; (2) arrest the [accused] and obtain a search warrant; or (3) forget about the roaches and walk away, in dereliction of their duty to seize illicit drugs, even if only to catalogue and destroy them. [para. 87]

However, Justice Moldaver, unlike the majority, would have admitted the firearms and drugs as evidence under s. 24(2). He opined that the law about no case seizures was not clear. Instead, he felt there was uncertainty as evidenced by the trial judge and three appellate court judges finding the police acted lawfully.

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

EXTERNAL LEARNING OPPORTUNITIES

OSGOODE
OSGOODE HALL LAW SCHOOL
PROFESSIONAL DEVELOPMENT

6th National Conference on Aboriginal Criminal Justice Post-Gladue (Co-Presented with Aboriginal Legal Services)

April 29, 2017

In Person and Webcast

Click here.

Evidence in Criminal Investigations: The Latest Developments in Law and Practice

May 17, 2017

Online Replay

Click here.

11th National Symposium on Money Laundering and Financial Crimes

May 26, 2017

In Person and Webcast

Click here.

Meeting the Legal Challenges of Policing in Canada

September 296, 2017

In Person and Webcast

Click here.

CHARACTER CANADA
National Character Conference

October 20, 2017 - Abbotsford, BC - Click here.

ADULT CORRECTIONAL STATISTICS

According to the Statistics Canada Report **"Adult correctional statistics in Canada, 2015/2016"** released on March 1, 2017, on a typical 2015/2016 day in Canada there were ...

40,147
adults in custody

25,405
adults in provincial/territorial custody

120,568
adult offenders in custody or in a community program

90,087
adults under community supervision such as probation & CSO

14,742
adults in federal custody

86,749
adults on probation

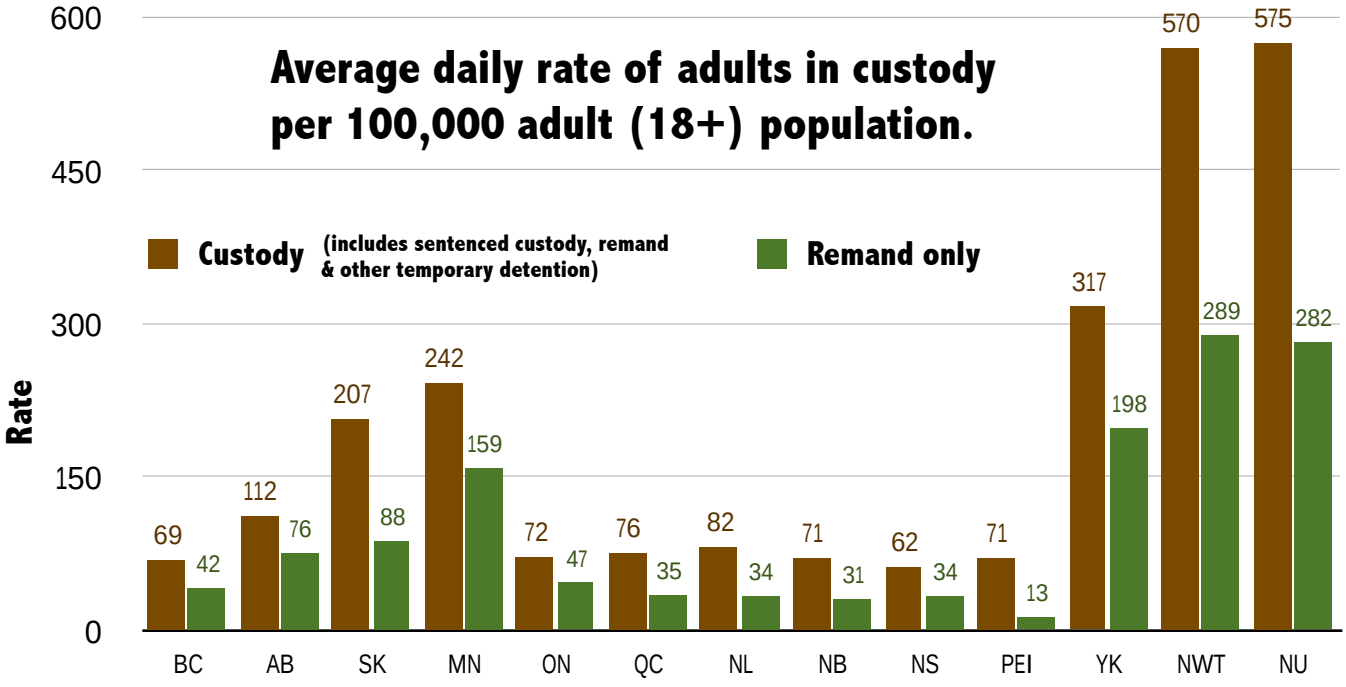
29,956
adults supervised in the federal system

women
accounted for 14% of remands

14,899
adults in remand awaiting trial or sentencing

Aboriginals

accounted for 26% of admissions to provincial/territorial correctional services and 28% of admissions to federal custody but only represented about 3% of adult population

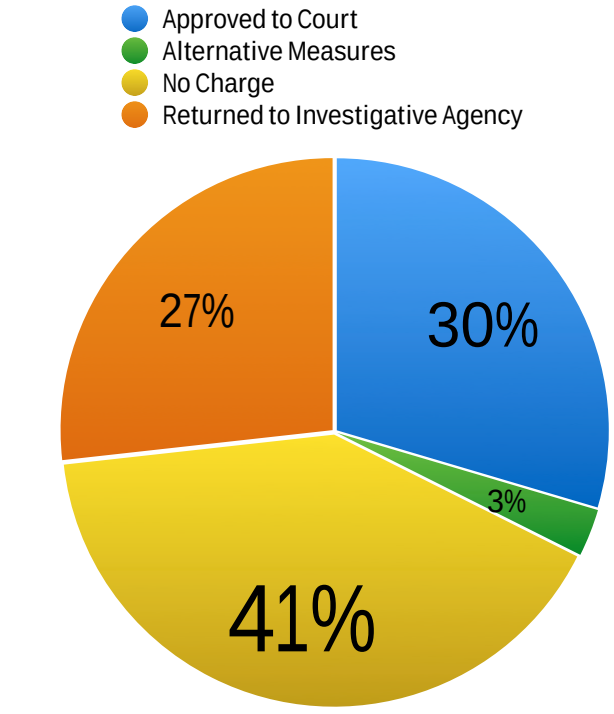


BC COPS INVOLVED IN OFFENCES

Contained within BC's Prosecution Service Annual Report for 2015/16 there is a section entitled ***"In Focus - Peace Officer-Involved Offences"***. This part of the report details statistics where a police officer or other investigative officer was accused of committing an offence while on or off-duty. In fiscal year 2015/16, BC's Criminal Justice Branch received 55 Reports to Crown Counsel (RCCs) involving an accused peace officer, up 7.8% from 51 in 2014/15. Of those 55 RCCs to be assessed by Crown Counsel, 24.5% came from BC's Independent Investigations Office (IIO).

In 2015/16, Crown Counsel made a total of 71 charge assessments with an accused peace officer. Of these, 21 were approved to court, 29 resulted in no charges, 19 were returned to the investigative agency and two resulted in alternative measures.

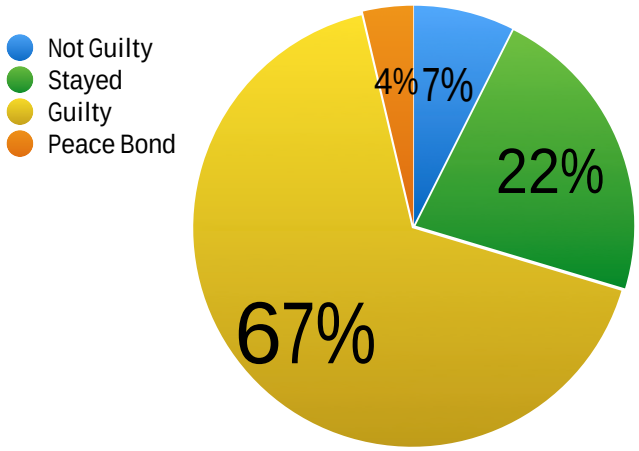
Charge Decisions - Peace Officer(s) Accused - 2015/16



Source: B.C.'s Prosecution Service. Annual Report 2015/16.

In 2015/16 there were 27 cases concluded against peace officers. Of these, there were 18 findings of guilt, six (6) stays of proceeding, two (2) not guilty and one (1) peace bond.

Findings - Peace Officer(s) Involved - 2015/16



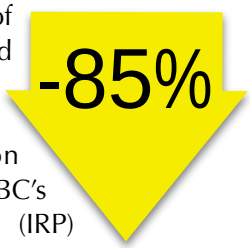
Independent Investigations Office (IIO)

In the IIO's Annual Report 2015/16, a number of statistics are detailed. These include the following:

- In 2015/16 the IIO referred 14 files to Crown Counsel for consideration of charges. Of these:
  - Seven (7) involved RCMP detachments, six (6) involved municipal police departments and one (1) case involved multiple agencies and specialized units.
  - One (1) case led to a charge - assault.
  - 11 cases resulted in no charges.
  - Two (2) cases were pending.
- From September 2012 to March 2016, the IIO had referred 50 cases to Crown Counsel. Of these:
  - 39 cases resulted in no charges.
  - Eight (8) cases were approved for charges:
    - Two (2) cases were stayed.
    - Two (2) cases resulted in guilty pleas.
    - One (1) case resulted in an acquittal.
    - Three (3) cases were pending.
  - IIO charge approval rate was 16%.

Source: Independent Investigations Office of BC. Annual Report 2015-2016.

IMPAIRED DRIVING OFFENCES: DID YOU KNOW...



... there has been a decrease of approximately 85% in impaired driving-related Reports to Crown Counsel (RCCs) received annually by BC's Prosecution Service since the introduction of BC's Immediate Roadside Prohibition (IRP) program in 2010.

In fiscal 2015/16 there were 65 RCCs received by Crown Counsel for impaired driving offences involving bodily harm or death and 1,554 RCC's for impaired driving offences not involving bodily harm or death. During this same period, 57 cases of impaired driving involving bodily harm or death were approved to court while 1,376 cases not involving bodily harm or death were approved.

In 2015/16 there were 44 offences of bodily harm or death concluded in court. Thirty-five (35) people were found guilty, one (1) not guilty, five (5) were stayed and three (3) resolved by other means. At the same time 1,294 offences not involving bodily harm or death were concluded. Of these, 1,115 resulted in a guilty finding, 24 not guilty, 142 stayed and 13 resolved by other means.

Source: B.C.'s Prosecution Service. Annual Report 2015/16.

ROUTINE SAFETY SEARCH RESULTS IN EXCLUSION OF EVIDENCE

R. v. Peekeekoot, 2017 SKQB 27

Police officers responded to the dispatch of a robbery just before midnight. The victim was robbed at knife point and a cellphone was taken. The suspects were described as three native males shorter than 6'2". One was reportedly wearing all white, one was wearing all black, and one was wearing a white sweater and green stripes. Within a few minutes of receiving the dispatch, the officers came upon a group of four native males approximately three blocks from where the robbery occurred. One male was wearing white track pants with a black shirt. As the officers approach these males to determine if they had been involved in the robbery, the accused left the group. An officer caught up to him, grabbed hold of his arm, placed him in handcuffs and searched him for weapons. The officer found a two foot long machete, in a sheath, inside the accused's pants. The accused was arrested and charged with carrying a concealed weapon, but was later ruled out as a suspect in the robbery.

Saskatchewan Court of Queen's Bench

The arresting officer testified he had a reasonable suspicion that these individuals may have have been involved in the robbery, but that he did not have enough grounds to arrest them. He said he placed the accused in handcuffs for safety. He also described that the reason for the search as officer safety. He said he was searching for weapons, knives or needles. He testified that he searches anyone he is going to place in a police vehicle, or anyone put in handcuffs, on the basis of officer safety.

Detention

The judge found that the accused was detained when his liberty was physically restrained. This investigative detention, however, was not arbitrary. "A review of the complete constellation of facts does not require there be absolute identity between the information the police have and those they detain to complete their investigation," said the judge. "While there must be sufficient comparison to allow the officers to have a reasonable suspicion based on the objective evidence that further investigation is required, this cannot be raised to the level of that necessary for an arrest."

In all of the circumstances the judge concluded there were sufficient factors to allow the officer to complete an investigatory detention. The police had a recent or ongoing criminal offence and there was a nexus between the accused and the crime. "A

robbery had recently been committed by native males wearing black and white clothing," said the judge "The officers, in their brief patrols, had not seen anybody else on the streets in the vicinity. There were some similarities between the group and the reported details. The robbery occurred only a few blocks from where this group was located. It had occurred within minutes of the officers observing the group on the street."

Safety Search

As for the safety search, the Crown tried to connect the reported robbery at knife point with a concern over officer safety. Although the judge found this made sense, he did not accept this proposition as justifying the search because that is not what the officer said. Rather, the officer testified that he completes a search with **EVERY** investigative detention. "The officer did not testify as to any grounds he had for concerns for his safety," said the judge. "Rather, this is something he effects every time he engages in an investigatory detention. On the facts of the case before me, there was no reasonable basis given for suspecting officer safety was in issue in this particular case. The officer did not testify as to this." Since the officer did not sufficiently articulate his cause to conduct the search, it was unreasonable and breached s. 8 of the *Charter*.

Exclusion of Evidence

In excluding the machete as evidence under the s. 24(2) inquiry, the judge found the police conduct in breaching the *Charter* was serious. "It has been found the officer completes a search in each and every case where he detains someone for an investigatory purpose," said the judge. "He apparently does this regardless of the stage of the inquiry or the nature of the investigation. This is not permissible on the authority of *Mann*. There was no articulable cause provided."

Complete case available at www.canlii.org

CELLPHONE SEARCHES INCIDENT TO ARREST: A REVIEW

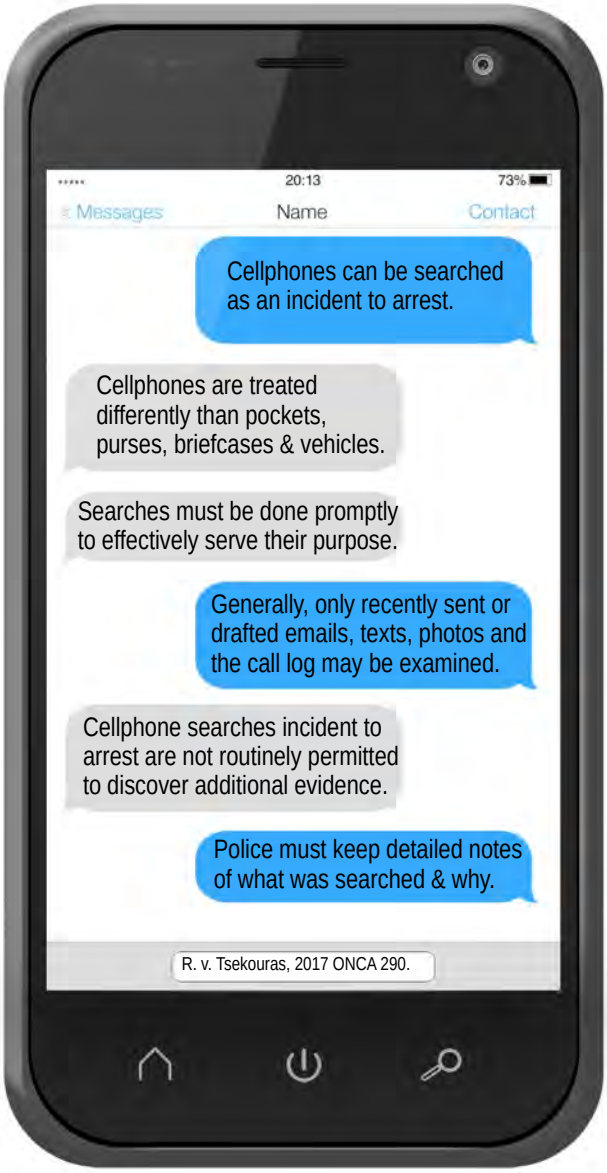
Recently, the Ontario Court of Appeal reviewed the authority to search a Blackberry or similar device as an incident to arrest. In *R. v. Tsekouras*, 2017 ONCA 290, the accused was arrested as part of a joint forces investigation into drug trafficking dubbed "Project Dolphin." During his arrest, as police directed him to get down, the accused took the battery out of his Blackberry device and threw the device to the ground. He was then handcuffed and searched incidental to arrest, as was his vehicle. The police seized the Blackberry he threw to the ground, a second Blackberry found in his vehicle and some cash. When a senior officer arrived on scene, the accused was ordered unconditionally released without a formal charge. A few months later the Blackberry that was thrown to the ground was sent to a police lab so its encryption could be unlocked and its contents searched. Messages found on the Blackberry became a critical part of the Crown's case.

An Ontario Superior Court justice rejected the Crown's contention that the accused abandoned his privacy interest in the Blackberry when he removed its battery and discarded the device immediately before his arrest. The judge found the warrantless search of the Blackberry breached s. 8 of the *Charter* but admitted the evidence under s. 24(2). There were other issues at trial, but in the end, the accused was convicted of several drug offences.

The accused appealed his convictions to the Ontario Court of Appeal arguing, among other things, that the trial judge erred in admitting the contents extracted from his Blackberry that was seized and examined without a warrant. In the accused's view, a proper analysis under s. 24(2) should have resulted in the exclusion of the Blackberry evidence. Justice Watt, speaking for a unanimous Appeal Court, discussed the police power to search cellphones as an incident to arrest as had been enunciated in *R. v. Fearon*, 2014 SCC 77. He reiterated the principles as follows:

Searching Cellphones Incident To Arrest

- "A cellphone may be searched incident to arrest, provided what is searched and how the search is conducted are strictly incidental to the arrest and the police keep detailed notes of what has been searched and why.
- "The power to search incident to arrest is a focused power assigned to police so that they can pursue their investigations promptly upon arrest. But the authority is not without its limits. The search must be truly incidental to the arrest, that is to say, exercised in the pursuit of a valid purpose related to the proper administration of justice.
- "A search is properly incidental to arrest when the police attempt to achieve some valid purpose connected to the arrest, such as protecting evidence from destruction by the arrested person or others, or discovering evidence. If the purpose of the search is the discovery of evidence, there must be some reasonable prospect of finding evidence of the offence for which the accused is being arrested. What matters is that there be a link between the location and purpose of the search and the grounds for the arrest.
- "Some modification of the common law search incident to arrest power was necessary when the object to be searched was a cellphone or similar device. After all, searches of these devices have the potential to be a much more significant invasion of privacy than the typical search incident to arrest of pockets, purses, briefcases and motor vehicles. Something more than the requirements of a lawful arrest and a search that is at once truly incidental to the arrest and reasonably conducted is essential to further protect a suspect against the risk of wholesale invasion of privacy.
- "Nothing short of strict adherence to the requirement that a search incident to arrest be truly incidental to the arrest would be tolerated where the object to be searched was a cellphone or similar device. The searches must



be done promptly to effectively serve their purpose, such as the discovery of evidence. To give effect to this approach, the court modified the general rules applicable to searches incident to arrest in three ways.

1. "**The scope of the search.** The scope of the search of a cellphone or similar device incident to arrest must be tailored to the purpose for which it may lawfully be conducted. Not only the nature, but also the extent of the search performed on the cellphone or similar device must be truly incidental to the particular arrest for the particular offence. And so it is, at least as a

general rule, that only recently sent or drafted emails, texts, photos and the call log may be examined. The reason is simple: only those sorts of items will have the necessary degree of connectedness to the purposes for which prompt examination of the device is authorized. Investigators must be able to explain, within the limited purposes of search incident to arrest or with reference to some other valid purpose, what they searched and why they did so. From this modification of the general rule relating to searches incident to arrest, it necessarily follows that this search authority is not a blank cheque for investigators to forage in the device unbounded. For example, to search or download its entire contents.

2. "**Searches to discover evidence.** Cellphone searches incident to arrest are not routinely permitted simply for the purpose of discovering additional evidence. A cellphone or similar device search incident to arrest for the purpose of discovering evidence is only a valid law enforcement objective when the investigation will be stymied or significantly hampered without the ability to search the device incident to arrest. Investigators must be able to explain why it was not practical, in all the circumstances of the investigation, to postpone the search until they could obtain a warrant.
3. "**A record of the search**. Officers executing the search must make detailed notes of what they have examined on the device and how it was searched. The applications searched, the extent and time of the search. Its purpose and duration.

- "Police are not entitled to navigate through unsettled areas of the law by following the least burdensome route. As a general rule, faced with genuine uncertainty, police should err on the side of caution by settling on a course of action that is more, rather than less respectful of the accused's privacy rights.

(references omitted, paras. 85-94)

NO AUTHORITY TO ENTER HOME TO SEE IF PARENTS ARE GOOD OR BAD

R. v. Davidson, 2017 ONCA 257

A motorist called 911 after seeing a four-year-old boy, clad only in a diaper, standing alone at a busy intersection at about 10:00 am in June. When police arrived, the boy was safely in his mother's arms, wrapped in a blanket. The accused, the boy's father, arrived soon after. He told police that his son was autistic and had a tendency to wander away from the family home, which was 50 meters away. The accused said he had installed a special lock high up on the door to the house but that his son had managed to open it and get out. The police insisted on examining the lock, and the accused agreed they could do so. Although satisfied with the lock, the police then insisted on looking inside the house. They claimed they were entitled to check on the boy's well-being by looking around the house to ensure he was safe and properly nourished.

Three police officers entered the house and an odour of marihuana was detected. The upstairs of the house was briefly searched. The police checked the kitchen cupboards and the refrigerator for food. Police then went down to the basement. The smell of marijuana became overwhelming and was coming from behind a closed and locked door.

"The s. 8 right to be secure against unreasonable searches protects a person's expectation of privacy from state intrusion. Nowhere is that expectation of privacy higher than in one's home. To enter a home, police ordinarily need previous authorization: a warrant. Warrantless entries of a home are presumed to be unreasonable and in breach of s. 8."

When the police asked for the key, the accused kicked the door open, revealing numerous marijuana plants. He was arrested and charged with producing marijuana, possessing marijuana and possessing marijuana for the purpose of trafficking.

Ontario Superior Court of Justice

At trial, a sergeant at scene conceded he did not believe the life or safety of a child inside the home was in danger nor did he have grounds to obtain a search warrant for the search he wanted to conduct. The sergeant also admitted to a systemic practice of warrantless searches of homes to check on the well-being of children. Further, evidence suggested that the police were not only concerned about the boy's safety but were also looking for drugs. Despite this, the judge found the primary motivation for the initial police entry was child welfare and the secondary criminal law aspect never overtook this child protection concern.

The judge found the child protection concern entitled the police to do a "protective sweep" of the house to "assess the degree of risk" to the young boy and his siblings. Thus, the initial police entry was lawful. However, the judge identified other *Charter* breaches. The police breached the accused's rights under s. 10(b) of the *Charter* by failing to advise him of his right to counsel after he was effectively detained (when police smelled the marijuana) and before questioning him about it. As well, the judge found the search for and discovery of the marihuana without a warrant violated s. 8. Nevertheless, the judge ruled the evidence admissible under s. 24(2) and the accused was convicted of producing marijuana and possessing it for the purpose of trafficking. He was sentenced to 18 months in custody.

Ontario Court of Appeal

The accused appealed his convictions arguing, in part, that the judge erred in ruling that the initial entry by police did not breach s. 8 and that the evidence should have been excluded under s. 24(2). The Crown, on the other hand, submitted that the police entry was lawful as a protective measure and, even if it was not, the police had the authority to enter by virtue of the accused's consent or the provisions of Ontario's *Child and Family Services Act* (CFSA).

Initial Entry

Justice Laskin, speaking for the Court of Appeal, described the warrantless presumption of s. 8 jurisprudence this way:

> The s. 8 right to be secure against unreasonable searches protects a person's expectation of privacy from state intrusion. Nowhere is that expectation of privacy higher than in one's home. To enter a home, police ordinarily need previous authorization: a warrant. Warrantless entries of a home are presumed to be unreasonable and in breach of s. 8. [para. 20]

He then recognized there were exceptions to the presumed unreasonableness of warrantless entries into a home such as "exigent circumstances" under statute (eg. 529.3 of the *Criminal Code*) or the common law exception of *R. v. Godoy*, [1999] 1 S.C.R. 311. *Godoy* recognized that "the police have a common law duty to protect a person's life or safety and that duty may, depending on the circumstances, justify a forced, warrantless entry into a home." But Justice Laskin noted that *Godoy* had narrow limits as to when the police can enter a person's home without a warrant in response to a

911 call. "The police must reasonably believe that the life or safety of a person inside the home is in danger," he said. "And once inside the home, their authority is limited to ascertaining the reason for the call and providing any needed assistance. They do not have any further authority to search the home or intrude on a resident's privacy or property."

Here, however, there were no exigent circumstances justifying warrantless entry. Unlike *Godoy,* where the emergency had not been resolved when the police arrived at the home and the victim was still inside, the boy in this case was safely in his mother's arms when police arrived and was outside the home, 50 meters away. Justice Laskin stated:

> In summary, in the case before us by the time the police arrived at the intersection, no exigent circumstances existed. There was no reason to believe the life or safety of any person inside the [accused's] home was at risk. They could see for themselves that the boy was safe and not in any immediate danger. Moreover, after the police had ascertained the reason for the 911 call, they were not entitled to search the Davidson house.
>
> [...]
>
> Godoy does not give the police sweeping authority to enter a home without a warrant to investigate whether a child's mother and father are good parents. In the present case, at most the police were entitled to inspect the lock, which they could do without going inside the home. Godoy did not support their warrantless entry and the trial judge erred in holding that it did. [paras. 29, 32]

Consent

The accused did not consent to police entry. At most, he acquiesced to the police intrusion into his home. He was never told of his right to refuse police entry into the home nor did he expressly consent to the search. Furthermore, the accused was never asked to sign a form that the police testified they normally use before conducting a consent search of a home.

"Godoy does not give the police sweeping authority to enter a home without a warrant to investigate whether a child's mother and father are good parents."

Child and Family Services Act (CFSA)

Under Ontario's *CFSA*, a police officer may enter a home without a warrant to bring a child to a place of safety only if the officer believes on reasonable and probable grounds that the child is in need of protection and there would be a substantial risk to the child's health or safety during the time needed to obtain a warrant or to bring the matter for a hearing. Justice Laskin concluded that, even if the boy was in need of protection, "there was no evidence of any risk, let alone a substantial risk, to the boy's health or safety if the police had taken the time to try and obtain a warrant." Moreover, the sergeant at the scene conceded he had no grounds to obtain a warrant.

s. 24(2) *Charter*

Because of the trial judge's error in finding the initial police entry reasonable, the Court of Appeal reassessed whether the marihuana was admissible under s. 24(2). In doing so, the *Charter* breaches were found to be at the high-end of the **seriousness** scale because:

- The police committed not one, but four separate breaches of the *Charter*;
- The initial entry into the home was by itself especially serious;
- The police not only entered accused's home without a warrant, they conceded they had no grounds to get a warrant. Instead, they relied on their misguided belief they could enter the home to find out whether the boy's parents were good parents;
- Ignorance of the scope of police constitutional authority does not amount to good faith; and
- The police admitted to a systemic practice of warrantless searches of homes to check on the well-being of children.

The impact of the breaches on the accused's *Charter*-protected interests was also **significant**. It involved a home which attracts a high expectation of privacy and the police conduct inside the home by searching his cupboard and refrigerator, and questioning him in front of his family infringed on his dignity. Despite the evidence being relevant, reliable and important to the Crown's case, the marihuana was excluded as its admission would bring the administration of justice into disrepute. The accused's appeal was allowed, his convictions were set aside and acquittals were entered.

Complete case available at www.ontariocourts.on.ca

RACIAL PROFILING CAN BE INFERRED FROM CIRCUMSTANCES

Elmardy v. Toronto Police Services Board, 2017 ONSC 2074

Two police officers were driving a police car on a winter's evening when they saw the plaintiff, a black man, walking in the opposite direction and on the opposite side of the street. Police had a hunch he might be violating bail and were concerned he might be carrying a weapon because he had his hands in his pockets. The police made a u-turn and pulled alongside the plaintiff. They questioned him but he was somewhat hostile. When he declined to take his hands out of his pockets, an interaction ensued during which one of the officer's punched the plaintiff twice in the face. The plaintiff was knocked to the ground, handcuffed and was left lying on a wood deck covered with ice. His hands were exposed to the ice for 20-25 minutes. All of his pockets were searched and emptied, and his wallet was searched. The plaintiff was carded; a field information report was completed. He was identified as being "black" and born in "Sudan." The plaintiff brought an action against the Toronto Police Services Board (TPSB) and the officer, suing them for assault, battery, unlawful arrest, and for violating his *Charter* rights.

Ontario Superior Court of Justice

The judge concluded that the officer committed battery and awarded the plaintiff $5,000. The plaintiff had also been arbitrarily detained under s. 9 of the *Charter*. The judge found the police had no reasonable suspicion of criminal activity when the plaintiff was stopped and awarded him $2,000. The judge stated:

> Here the police were engaged in a random stop and [the plaintiff] did not consent to speak to them. He had his hands in his pockets. But it was cold out and he had no gloves. The police had no right to detain [the plaintiff] for carding alone. Nor does the act of walking outside with one's hands in his pockets on a cold night in Toronto in January near Moss Park provide a reasonable basis to suspect that a person is carrying a weapon. There are no "objectively verifiable indications" supporting a subjective suspicion that this person might have been armed. Even a pat-down ... is not justified on the basis of a "vague or non-existent concern for safety, nor can the search be premised upon hunches or mere intuition." Nor can [the plaintiff's] express refusal to consent, even if rudely conveyed, provide a basis to detain him as discussed above. There was no criminal act being investigated. It is not crime to be rude or to try to keep one's hands warm. In my view the detention of [the plaintiff] in the circumstances that night in that place and time was unlawful and was a violation of his s.9 rights under the Charter. [references omitted, *Elmardy v. TPSB*, 2015 ONSC 295, para. 103]

As for the unlawful search of the plaintiff's pockets, the judge awarded $1,000. A further $1,000 was awarded for breaches of ss. 10(a) and (b) because the police did not tell the plaintiff why he was detained or give him his rights to counsel upon detention. Finally, the judge awarded the plaintiff $18,000 in punitive damages. Declarations that the plaintiff's rights were breached under ss. 8, 9 and 10 of the *Charter* were also made and he was awarded costs of the proceeding. As for the s. 15 *Charter* claim (equality rights), the judge declined to find that the conduct of the officers was racially motivated even though he found the police stopped the plaintiff so he could be carded. In the judge's view, the plaintiff had not proven on a balance of probabilities that the actions of the police were racially motivated.

punitive damages
damages to punish and deter blameworthy conduct.

Ontario Divisional Court

The plaintiff appealed the trial judge's failure to make a finding that he was a victim of racial profiling. As well, the amount of damages awarded was challenged.

Racial Profiling

Justice Sachs, speaking for the three member panel of the Divisional Court, agreed there was no direct evidence of racial profiling. However, she found there was circumstantial evidence from which an inference could be drawn that it was more probable than not that the officers' conduct was motivated by the fact that the plaintiff was black:

> The only reasonable inference to be drawn from the fact that both officers, without any reasonable basis, suspected the [plaintiff] of criminal behaviour, is that their views of the [plaintiff] were coloured by the fact that he was black and by their unconscious or conscious beliefs that black men have a propensity for criminal behaviour. This is the essence of racial profiling.
>
> In this case, the officers' unreasonable beliefs about the [plaintiff] caused them to assault the [plaintiff], unreasonably search him and forcibly restrain him. In other words, instead of presuming his innocence, they assumed and acted as if he were guilty and dangerous. He must be violating his bail and he must be carrying a gun. These assumptions, for which there is no explanation other than the colour of the [plaintiff's] skin, caused them to blatantly and aggressively violate the [plaintiff's] constitutional rights.
>
> The trial judge found that the officers' real motivation for stopping the [plaintiff] was so that they could "card" him by filling in information on a 208 card. This begs the question of why the officers would single the [plaintiff] out for "carding."
>
> However, the trial judge also found that the officers lied about why they stopped the [plaintiff] and "backfilled" a purpose after the fact. Lying about the real reason for a stop is another basis for drawing the inference that what motivated the stop was the [plaintiff's] race and colour. ... [T]he inference that a police officer is lying about why she or he singled out an individual for attention is a circumstance that is "capable of supporting a finding that the stop was based on racial profiling." Such a finding becomes even more compelling when, as here, the "lies" that the police chose to tell about why they stopped the individual are based on racial stereotypes, such as the belief that black men are more likely to be on bail and more likely to be carrying weapons. [references omitted, paras. 19-22]

The Divisional Court concluded that "the [plaintiff's] right to equal protection and equal benefit of the law without discrimination based on race under s. 15 of the *Charter* was also violated."

"[T]he officers' unreasonable beliefs about the [plaintiff] caused them to assault the [plaintiff], unreasonably search him and forcibly restrain him. In other words, instead of presuming his innocence, they assumed and acted as if he were guilty and dangerous."

Damages

The $5,000 **general damages** award for the battery was upheld. However, the **Charter damages** were increased from the $4,000 awarded at trial to $50,000 against the Toronto Services Board. "The driving force behind the Charter breaches – racial profiling – is a phenomenon that has been recognized as a problem in our police services for some time," said Justice Sachs. "Racial profiling has a serious impact on the credibility and effectiveness of our police services. It has led to distrust and injustice. It must stop." She continued:

> [T]he conduct of [the officer] was both high-handed and oppressive. The [plaintiff] was not only touched; he was punched in the face twice. The interaction lasted half an hour, much of which time the [plaintiff] spent on the ground, handcuffed, with his bare hands exposed to ice. The [plaintiff] was an innocent man who had fled his country looking for a society in which his rights would be respected. Instead of finding the respect to which he is entitled, he was subjected to humiliating, violent and oppressive behaviour from one of this city's police officers, all because of the colour of his skin. Further, when questioned about their behaviour the police officers were found to have lied to the Court, conduct that can seriously undermine the administration of justice.
>
> For these reasons, there is a need for an award of damages that is significant enough to vindicate society's interest in having a police service comprised of officers who do not brutalize its citizens because of the colour of their skin and that sends the message to that service that this conduct must stop. The courts and others have already made statements about the serious, wrongful nature of this type of conduct. Yet it continues to occur. Declaratory relief is just another such statement. More is required. [para. 35-36]

As for **punitive damages**, the award was increased from $18,000 at trial to $25,000 against the individual officer to punish and deter him for his misconduct. "The amount awarded should reflect the seriousness of that misconduct, but not be so large as to remove any realistic possibility that a police officer ... would be able to pay those damages," said the Appeal Court. "In my view, an award of $25,000 will accomplish these objectives. I appreciate that by reason of s. 50(1) of the Police Services Act ... the Toronto Police Services Board is also liable to pay this damage award. However, that fact is not determinative of the exercise I must perform in assessing damages, which is to determine the amount that the person who is directly responsible for those damages should pay."

The plaintiff's appeal was allowed, the trial judge's award for *Charter* and punitive damages of $27,000 was set aside and replaced by an award of $75,000. The battery award of $5,000 remained unchanged.

Complete case available at www.canlii.org

A Note on Costs

At the initial trial, the judge awarded the plaintiff $60,000 for the costs of bringing the action (2015 ONSC 3710) and on appeal the Divisional Court awarded an additional $20,143.37 for appeal costs.

"The driving force behind the Charter breaches – racial profiling – is a phenomenon that has been recognized as a problem in our police services for some time. ... Racial profiling has a serious impact on the credibility and effectiveness of our police services. It has led to distrust and injustice. It must stop."

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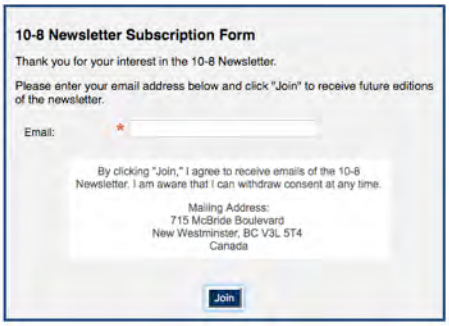
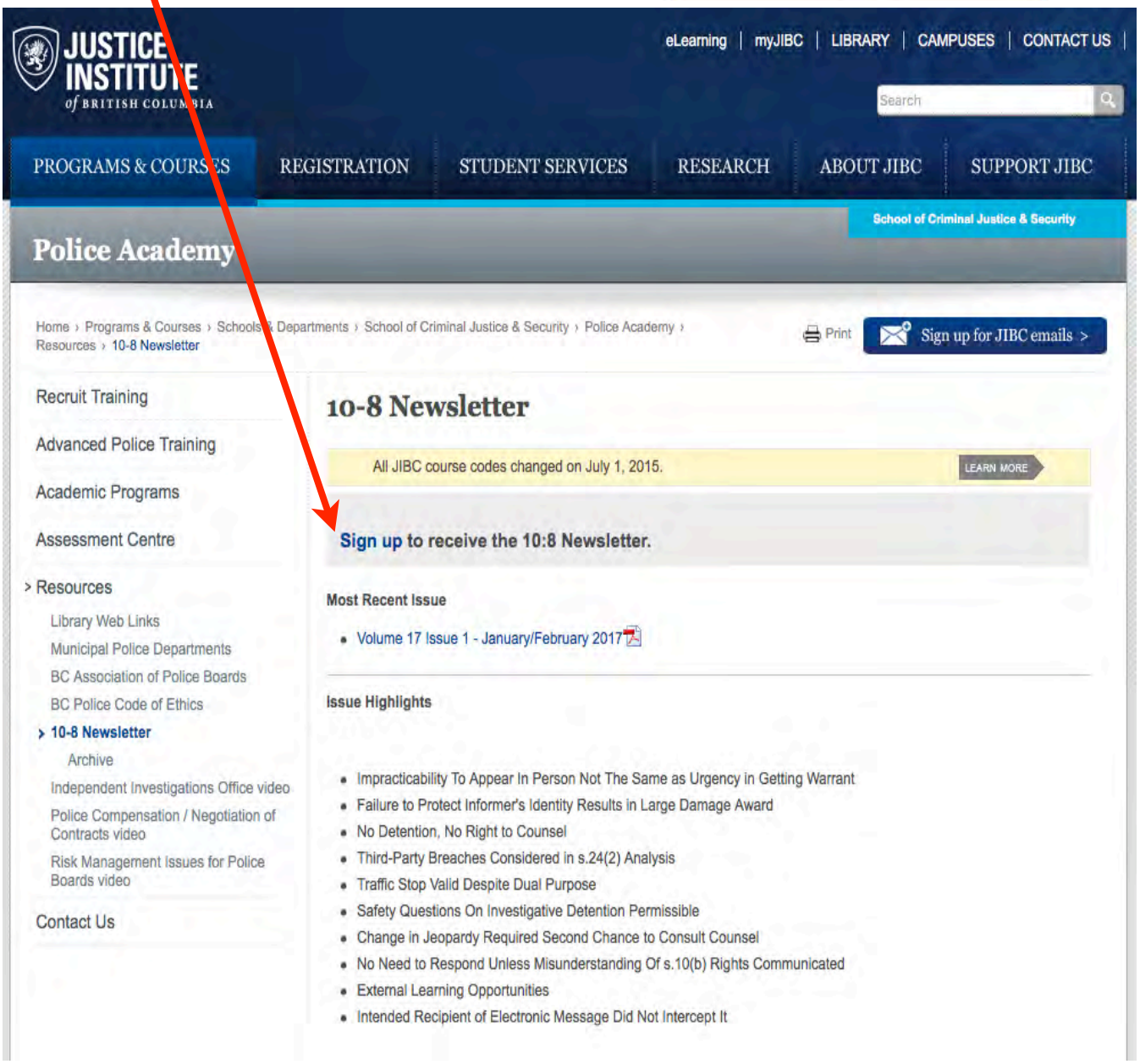




Canadian Police and Peace Officers' 40th Annual Memorial Service

September 24, 2017
Parliament Hill
Ottawa, Ontario

Le 24 septembre 2017
Colline du Parlement
Ottawa (Ontario)

Le 40e service commémoratif annuel des policiers et agents de la paix canadiens

www.thememorial.ca

POLICING ACROSS CANADA: FACTS & FIGURES

According to a recent report released by Statistics Canada, there were 68,773 active police officers across Canada in 2016. This represented a decrease of two (2) officers from the previous year. Ontario had the most police officers at 26,168, while Nunavut had the least at 131. With a national population of 36,286,425, Canada's average cop per pop ratio was 190 police officers per 100,000 residents.

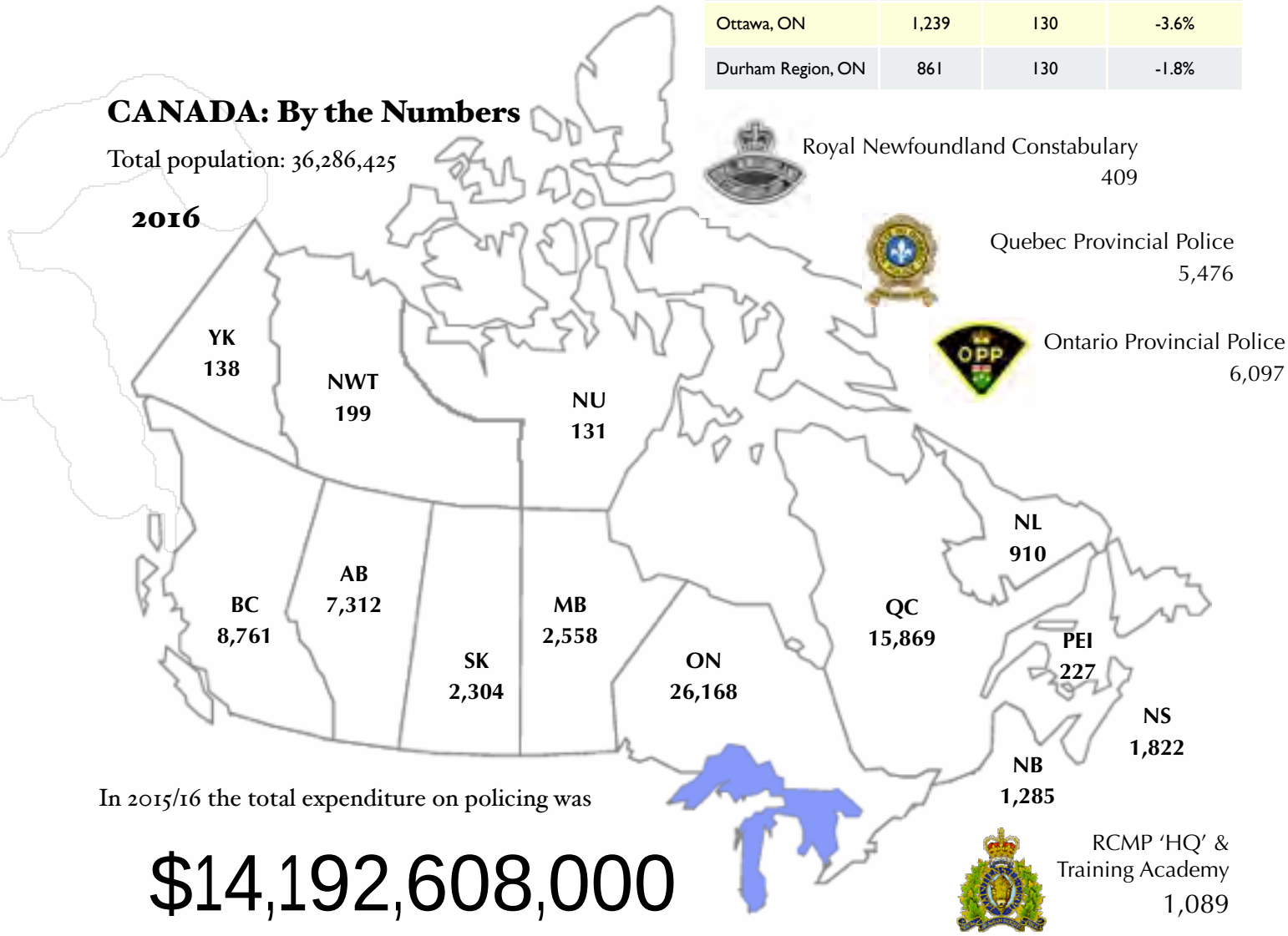
Source: Statistics Canada, Police Resources in Canada, 2016, Catalogue no: 85-225-X, March 2017

Canada's Police Officers by City - Top 10			
CMA	Officers		% Change
	Number	per 100,000	2015>2016
Toronto, ON	5,366	190	-1.9%
Montreal, QC	4,583	229	-1.9%
Calgary, AB	2,172	168	-1.1%
Peel Region, ON	1,967	143	-0.7%
Edmonton, AB	1,739	183	+2.2%
York Region, ON	1,598	140	+2.6%
Winnipeg, MB	1,416	197	-1.7%
Vancouver, BC	1,292	196	-0.2%
Ottawa, ON	1,239	130	-3.6%
Durham Region, ON	861	130	-1.8%

CANADA: By the Numbers

Total population: 36,286,425

2016



Royal Newfoundland Constabulary
409

Quebec Provincial Police
5,476

Ontario Provincial Police
6,097

RCMP 'HQ' & Training Academy
1,089

In 2015/16 the total expenditure on policing was

$14,192,608,000

2016 FAST FACTS

- On the snapshot day of May 15, 2016 there were 68,773 police officers in Canada. There were an additional 28,422 civilians, which represented 29% of all police personnel. There were 2.4 officers for every civilian employed.
- Saskatchewan had the highest provincial rate of police strength at 200 officers per 100,000 residents (cop to pop ratio) followed closely by Manitoba at 194 officers per 100,000. The Northwest Territories had the highest territorial cop to pop ratio at 448 officers per 100,000.
- 55% of police officers were 40 years of age or older.
- 68% of OPP officers were over the age of 40.
- For municipal police services serving a population of 100,000 or more, Victoria B.C. had the highest police strength at 236 officers per 100,000, followed by Montreal, QC (229) and Halifax, NS (219). Richmond, BC had the lowest police strength at 97 officers per 100,000.
- For 2015/2016, 86% of officers hired were recruits. The remainder were experienced police officers.
- In May 2016 there were 14,545 female police officers in Canada. This represents 21% of all officers.
- Police expenditures continue to rise, more than doubling since 2000.
- Per capita costs for policing in fiscal 2015/2016 translated to $396 per Canadian.
- Provincial police services in Ontario, Quebec and Newfoundland cost $2.185 billion.
- Stand alone municipal services cost $7.5 billion.
- The total operating costs for the RCMP amounted to $4.48 billion.

RETIREMENT

At the end of the 2015/2016, 10% of police officers were eligible to retire. Newfoundland and Labrador had the highest proportion of officers that could retire at 20%. Forty three percent (43%) of officers at RCMP Headquarters and the Training Academy could retire.

Top 10 Retirement Eligible Municipal Police Services

Municipal Police Service	Eligible to Retire %
St. John's, NL	28.4%
Winnipeg, MB	25.4%
Codiac Region (Moncton) NB	21.8%
Victoria, BC	21.4%
Hamilton, ON	19.0%
Montreal, QC	16.3%
Levis, QC	13.1%
Kelowna, BC	12.4%
Guelph, ON	10.9%

RCMP

The RCMP is Canada's largest police organization. It is divided into 15 Divisions with Headquarters in Ottawa. Each division is managed by a commanding officer and is designated alphabetically.

RCMP DIVISIONS	
Division	Area
Depot	Regina, SK (Training Academy)
National	National Capital Region
B	Newfoundland & Labrador
C	Quebec
D	Manitoba
E	British Columbia
F	Saskatchewan
G	Northwest Territories
H	Nova Scotia
J	New Brunswick
K	Alberta
L	Prince Edward Island
M	Yukon Territory
O	Ontario
V	Nunavut Territory

RCMP On-Strength Establishment
as of December 1, 2016

Rank	# of positions
Commissioner	1
Deputy Commissioners	6
Assistant Commissioners	28
Chief Superintendents	56
Superintendents	179
Inspectors	350
Corps Sergeant Major	1
Sergeants Major	4
Staff Sergeants Major	14
Staff Sergeants	787
Sergeants	1,925
Corporals	3,463
Constables	11,731
Special Constables	62
Civilian Members	3,902
Public Servants	6,679
Total	**29,188**

Source: www.rcmp-grc.gc.ca/about-ausujet/organi-eng.htm

RCMP Officers by Level of Policing - Canada 2016 (numbers do not include 1,130 members at HQ & Training Academy)

Level / Region	BC	AB	SK	MN	ON	QC	NB	NS	PEI	NL	YK	NWT	NU	Total
Contract	5,378	2,640	1,018	797	-	-	695	789	101	409	119	178	116	12,240
Federal & other policing	851	369	230	177	1,631	898	154	164	29	92	19	21	15	4,650
Total	6,229	3,009	1,248	974	1,631	898	849	953	130	501	138	199	131	16,890

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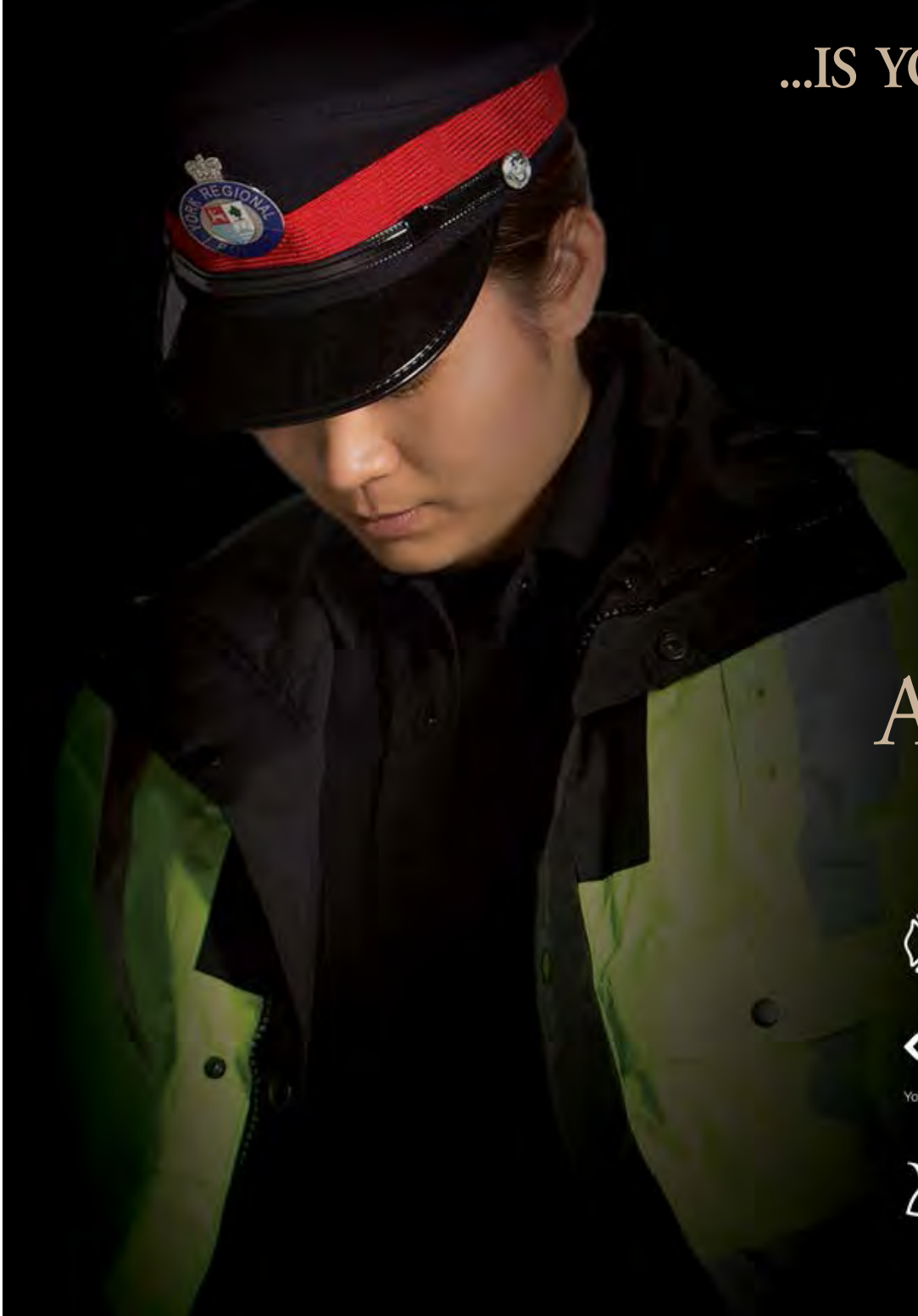

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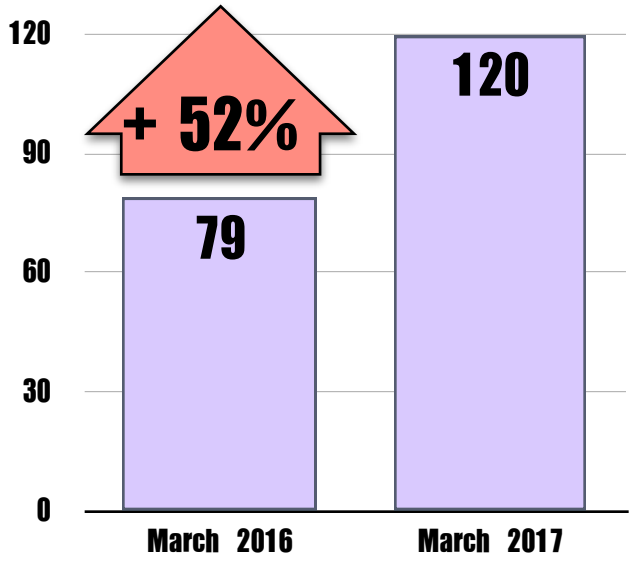
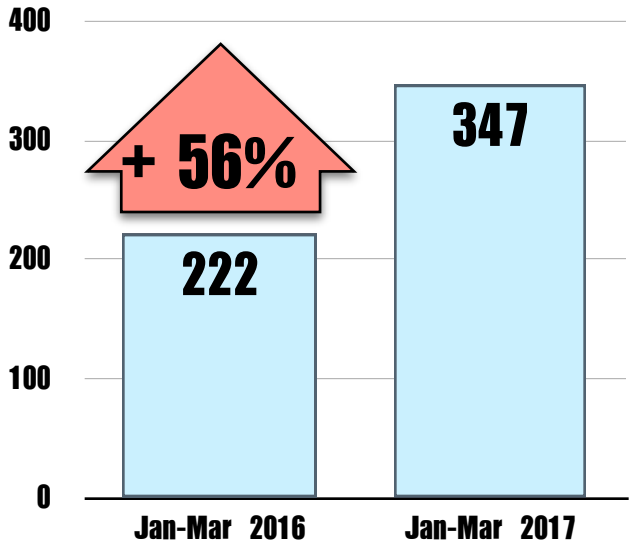
ILLICT DRUG OVERDOSE DEATHS ON THE RISE

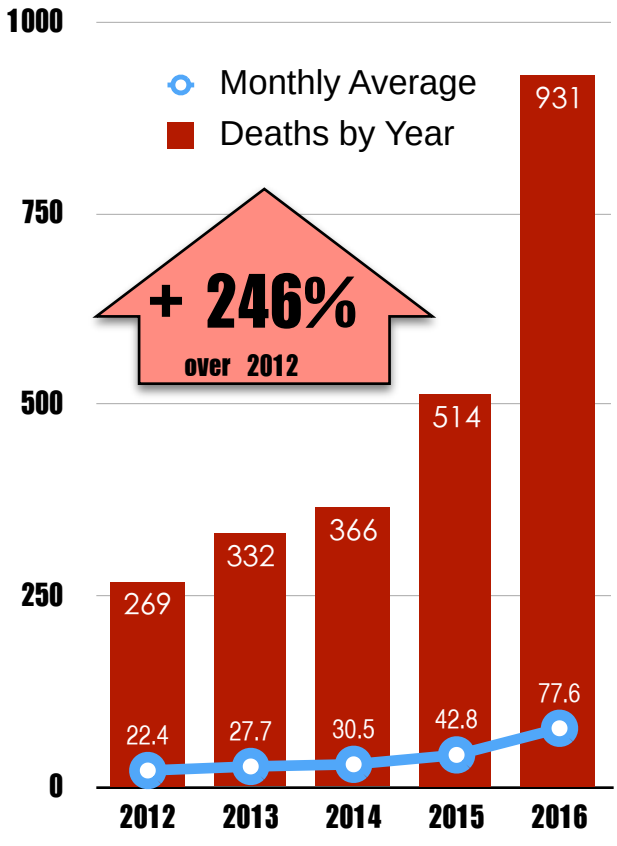
The Office of BC's Chief Coroner has released statistics for illicit drug overdose deaths in the province from January 1, 2017 to March 31, 2017. In March there were 120 suspected drug overdose deaths. This represents a 52% increase over the number of deaths occurring in March 2016. This amounts to about four (4) people dying every day of the month.

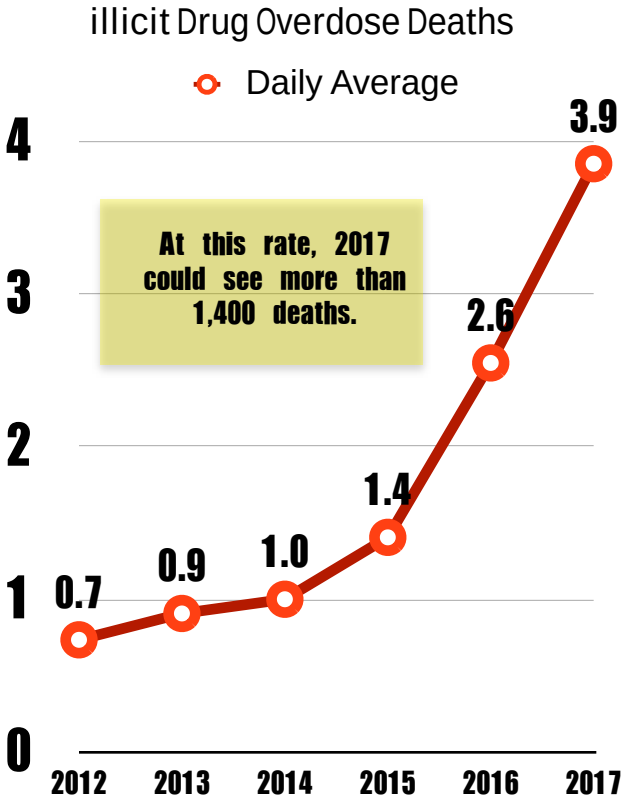


From January 1 to March 31 there were a total of 347 illicit drug overdose deaths. This is a 56% increase over the same period last year.



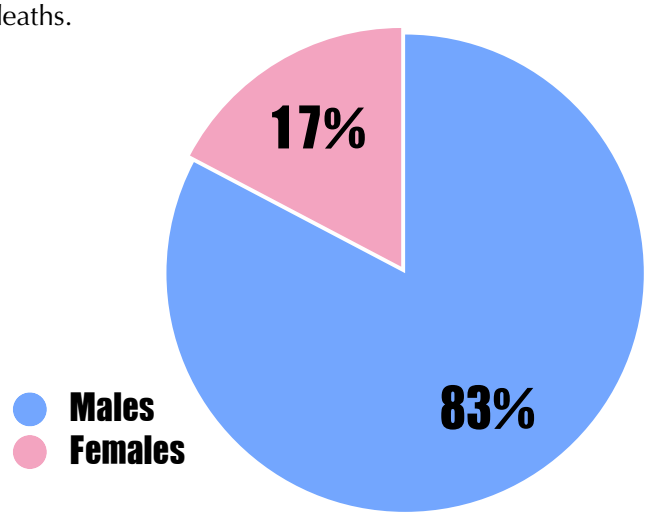
Last year, there were 931 overdose deaths, more than an 80% increase over the same period in 2015 and a 246% over 2012. Moreover, the report attributes fentanyl laced drugs as accounting for the increase in deaths. In December 2016 alone, there were 142 deaths. This was the highest recorded number of deaths occurring in a single month in BC and was more than double the monthly average of illicit drug overdose deaths since 2015.

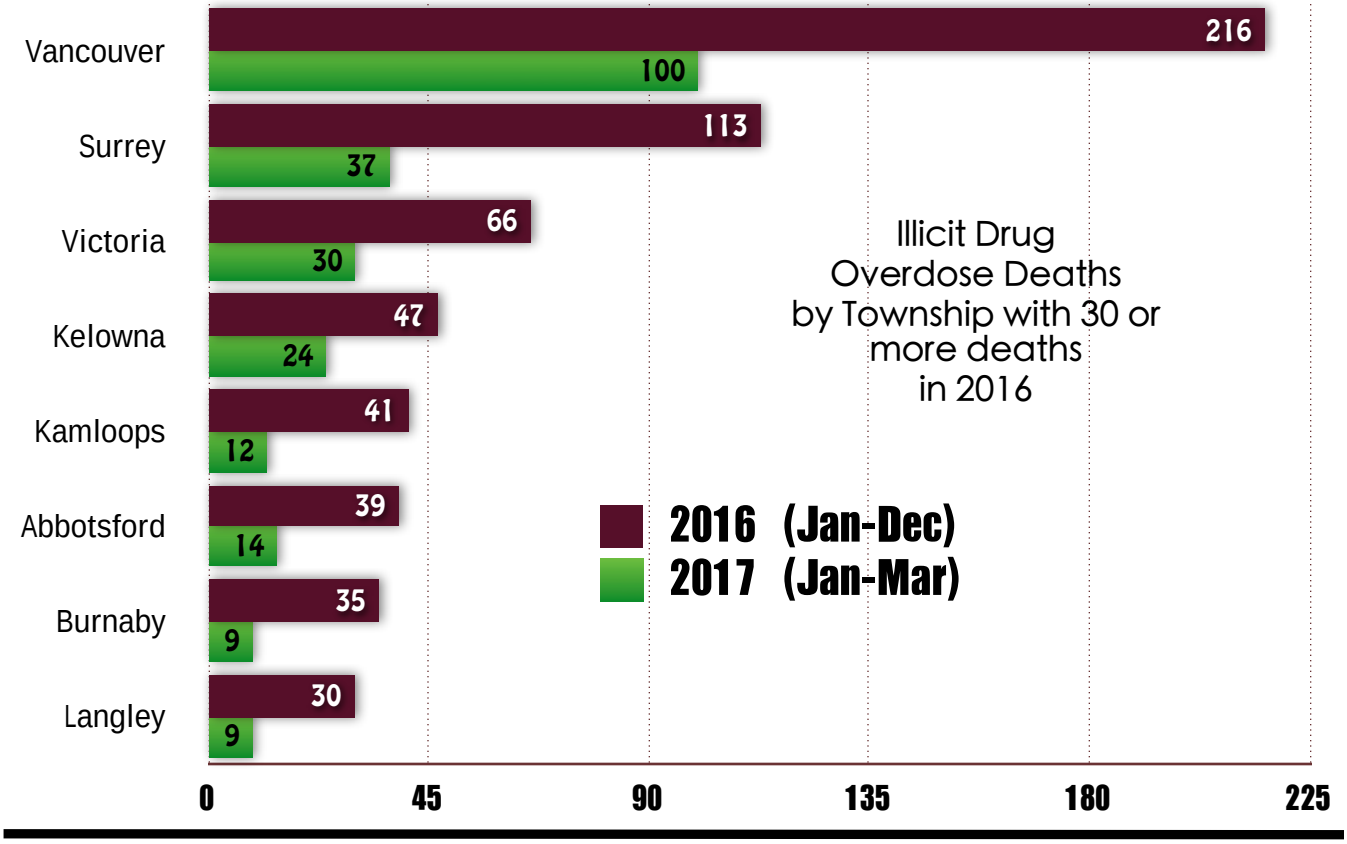




People aged 30-39 have been the hardest hit so far in 2017 with 103 illicit drug overdose deaths followed by 40-49 year-olds at 79 deaths and 19-29 year-olds at 70 deaths. Vancouver had the most deaths at 100 followed by Surrey (37), Victoria (30), Kelowna (24) and Abbotsford (14).

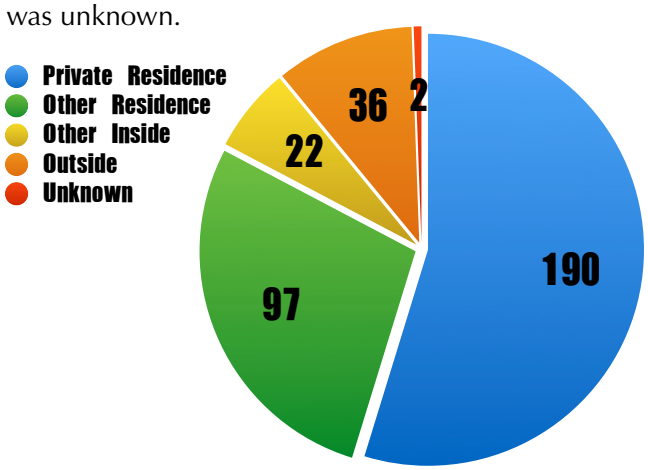
Males continue to dies at more than a 4:1 ratio compared to females. From January to March 2017, 287 males have died while there were 60 female deaths.





Deaths by location: Jan-Mar 2017

The data indicates that most (**89%**) illicit drug overdose deaths occurred inside while **10%** occurred outside. For two (2) deaths, the location was unknown.



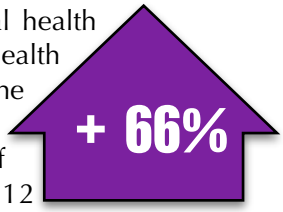
"**Private residence**" includes residences, driveways, garages, trailer homes.

"**Other residence**" includes hotels, motels, rooming houses, shelters, etc.

"**Other inside**" includes facilities, occupational sites, public buildings and businesses.

"**Outside**" includes vehicles, streets, sidewalks, parks, wooded areas, campgrounds and parking lots.

DEATHS SINCE PUBLIC HEALTH EMERGENCY



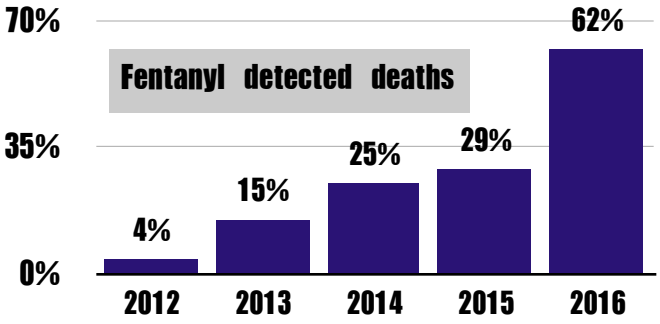
In April 2016, BC's provincial health officer declared a public health emergency in response to the rise in drug overdoses and deaths. The number of overdose deaths in the 12 months preceding the declaration (April 2015-March 2016) totaled **635**. The number of deaths in the 12 months following the declaration (April 2016-March 2017) totaled **1,056**. This is an increase of **66%**.

TYPES OF DRUGS

The top four detected drugs relevant to illicit drug overdose deaths from 2015 and 2016 were cocaine, which was detected in **48.8%** of deaths, fentanyl (**43.1%**), heroin (**37.1%**) and methamphetamine/amphetamine (**29.6%**).

Many police departments are trying to message to various segments of the population in different ways. Above is one such messaging example provided by the Abbotsford Police Department as is the example on p. 36. (Source Abbotsford Police)

From January to February 2017, fentanyl was detected in **61%** (139) of illicit drug overdose deaths. This is a **90%** increase in which fentanyl was detected in deaths occurring during the same period in 2016 where fentanyl was detected in 79 deaths.



Sources:

-Illicit Drug Overdose Deaths in BC - January 1, 2017 to March 31, 2017.

-Fentanyl Detected Illicit Drug Overdose Deaths - January 1, 2012 to February 28, 2017.

Ministry of Justice, Office of the Chief Coroner. April 19, 2017.

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