# ISSUES OF INTEREST

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# The Feeney Decision: Bad Faith By Whom?


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To say the Supreme Court of Canada (the "SCC") has dealt a serious blow to society and law enforcement in Canada in *R. v. Feeney*[1] is a gross understatement. It is the position of the authors that the Majority did not comprehend the effects of this decision. It is certainly reminiscent of the catastrophe that followed in the wake of the Supreme Court decision in *R. v. Askov*[2] (regarding unreasonable trial delay). *Feeney* once again raises that age old issue of allowing a court, rather than an elected body, to make law and determine the price to be paid by society and innocent victims in protecting our individual freedoms. It is the authors' opinion that the *Charter* was never intended to grant the SCC the broad powers (which the SCC appears to exercise in *Feeney*) to effectively make laws and extend the supremacy of individual rights to the exclusion of any and all others. *Feeney* also raises fundamental questions about the value of life and dignity in a world where the Court, in the staid and detached atmosphere of the courtroom, second guesses split second decisions made by police officers in the imperfect and uncontrolled environment of the real world *(e.g.* whether there were reasonable and probable grounds to believe Feeney had committed the murder). This article will canvass the issues dealt with in *Feeney* and summarize the most significant implications of this case on the police and their ability to do their collective job.

## Facts

In the early morning hours of June 8, 1991, Frank Boyle (86 years) was viciously bludgeoned to death in his home in the small isolated town of Likely B.C., population 300. The murder scene was covered in Mr. Boyle's blood. Upon arriving at the scene, investigators from the Williams Lake RCMP Detachment learned that the victim's truck had been driven into the ditch half a kilometre from his home. The investigators believed that, in all likelihood, the vehicle was driven by someone other than Boyle at the time of the accident, since Boyle was known to be a slow and cautious driver. The investigators believed that the killer had probably stolen it.

The investigators learned that one resident, Potter, had observed Feeney, whom she knew, walking away from the scene of the accident toward his home at approximately 6:45 a.m. It appeared that he was carrying a stick or beer in his hand. Another resident, Spurn, told the investigators that earlier in the morning, another vehicle had gone into the ditch at exactly the same spot where Boyle's truck was found. Spurn advised the police that the first vehicle was owned by Feeney's brother-in-law, Russell, and that Russell had told him that Feeney was responsible for the earlier accident.

Russell confirmed to the police that Feeney had stolen a vehicle from his property earlier in the night and had driven it off the road just down from Boyle's residence. Russell also advised police that Feeney was residing in an equipment trailer at the back of the property occupied by Russell and his wife (Feeney's sister). Russell reported seeing Feeney come home by foot at approximately 7:00 a.m. after a night of drinking.

The investigators attended at the windowless trailer, knocked and said "Police". When no one answered, they went in with guns drawn (held down by their side). Feeney was lying on a bunk, apparently asleep. The senior investigator shook Feeney's leg saying "Wake up, police. I want to talk to you." Feeney was asked to step to the front of the trailer where there was more light. The investigator immediately saw that Feeney's shirt was splattered with blood. He placed Feeney under arrest and another officer read Feeney's rights under the *Charter*. When asked if he understood, Feeney stated "Of course, do you think I am illiterate?" The investigators seized Feeney's shirt and took him to the RCMP Detachment in Williams Lake.

At the Detachment, Feeney tried several times to contact a lawyer without success. The police then administered a breathalyzer test without telling Feeney that he had the choice to refuse (the readings were .08 and .07). Later, even though Feeney had not yet spoken to a lawyer, he was questioned. He eventually admitted to "striking Boyle, stealing

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cigarettes, beer, and cash from [the] residence." The police subsequently obtained a search warrant and searched the trailer, seizing a sum of money hidden under the mattress believed to have been stolen from Boyle, as well as a pack of cigarettes and Feeney's running shoes. Feeney was fingerprinted and photographed the next day and finally contacted a lawyer.

## Issues

At trial, Feeney's counsel asserted that the police violated ss. 7 (life, liberty and security of person), 8 (unreasonable search or seizure), 9 (arbitrary detention) and 10(b) (retain and instruct counsel without delay) of the *Charter*. In effect, it was argued that the police did not have grounds to enter the trailer and arrest Feeney and thus his *Charter* rights were violated. Justice Sopinka, writing for the majority (La Forest, Cory, Iacobucci, and Major JJ.) (the "Majority") concluded that "the police indeed violated ss. 8 and 10(b) of the *Charter* and the evidence gathered as a result should have been excluded under s. 24(2) of the *Charter*" (para. 120).

Madame Justice L'Heureux-Dube, writing for the dissent (Gonthier and McLachlin J.), in a stinging and comprehensive analysis of the Majority position, found ss. 8 and 10(b) were not violated; for different reasons, Lamer C.J. agreed with the conclusions of the dissent (for a total of four) (the "Dissent").

## Section 8

The primary issue in the case was whether the initial entry into the trailer, and the subsequent arrest and seizure of evidence from Feeney by the police was lawful. Section 8 of the *Charter* is only applicable if there is a reasonable expectation of privacy. In this case, there was agreement among the Justices that Feeney was entitled to a reasonable expectation of privacy since he was living in the trailer and paid rent; therefore, s. 8 of the *Charter* applied. The Dissent noted, however, that an expectation of privacy is not absolute and if the intrusion by the police was, on the facts of the case, a reasonable one then it would be lawful notwithstanding the expectation of privacy (para. 22).

The starting point in the analysis of whether a search violates s.8 of the *Charter* is the presumption that a *warrantless* search (*i.e.* a search without prior judicial authorization) is unreasonable and in contravention of s. 8 of the *Charter*. [3] This presumption can be rebutted if: 1) the warrantless search was authorized by law, 2) the law itself is reasonable, and 3) the manner in which the search is carried out is reasonable (the "Collins Test").[4]

### *Lawfulness of the Arrest - Was it Authorized by Law?*

On the first leg of the Collins Test, the Majority examined the pre-*Charter* common law on arrests in dwelling houses. Combining various common law cases[5] and s. 495 of the *Criminal Code*, the Majority concluded that a pre-*Charter* warrantless arrest following forced entry into private premises was legal if: (a) there are reasonable grounds to believe the person sought is inside, (b) proper announcement (except in exigent circumstances) is made prior to entry (*i.e.* by giving *notice* of (i) *presence* (knocking or doorbell); (ii) *authority* (identify as police); and (iii) *purpose* (reason for entry)), (c) the officer subjectively had grounds to arrest, and (d) objectively reasonable and probable grounds to arrest existed (para. 139) (the "Landry Test").

The next step in the analysis was to determine whether the police complied with the Landry Test in the *Feeney* case. There was no question that the police had reasonable grounds to believe that Feeney was inside the trailer. After all, they had been told as much by Russell. The contentious issues were whether there were reasonable grounds to arrest, and whether proper announcement was made.

### *(i) Objective Grounds for Arrest*

On this issue, the Majority held that the trial judge erred in holding that the objective test was satisfied. They based this conclusion on a very technical and, in the authors' view, specious basis (para. 145-146). The Dissent, on the other hand,

agreed with the trial judge that the objective grounds were satisfied based upon the information the investigators had gathered prior to entering the trailer (para. 36).

The Dissent based this decision upon a number of factors including the recency of the murder, the nature of the community in which the killing took place (*i.e.* rural, small population, and no traffic in early morning hours, making it very unusual to see someone walking away from the scene of accident), the fact that Feeney had earlier crashed a vehicle in exactly the same spot the victim's vehicle was crashed, and the reasonable inference that whoever killed the victim had also stolen his truck (para. 32).

The Dissent concluded that the Majority failed to take into account the unique rural characteristics of the community in objectively assessing the reasonable grounds, and had instead examined them in a "vacuum", which had led them to an incorrect result (para. 34).The Dissent held that while the mere fact of Feeney being present at the scene of the accident involving the victim's truck in the early morning hours might not be particularly probative in a large city, it was extremely probative in the context in which it took place (para. 35).

***(ii) Subjective Grounds for Arrest***

The Majority held that subjectively the lead investigator did not believe that he had reasonable grounds to arrest Feeney. They reached this conclusion based on two factors: (a) a very strict, technical and non-contextual review of selected testimony from the lead investigator (para. 142), and (b) the Majority's contention that if he believed he had grounds to arrest Feeney, he would have arrested him immediately rather than waiting until after seeing blood stains on Feeney's shirt (para. 143). This second point is a conclusion based not on any facts presented in this case, but rather on the particular biases of the Majority. There are many instances where the police, for legitimate reasons, do not arrest a suspect right away even though they have the grounds to do so, a fact which was pointed out by the Dissent (para. 45).

In direct contrast to the Majority, the Dissent concluded that subjectively the investigators did have reasonable grounds to believe Feeney committed the murder, notwithstanding that they did not arrest him immediately upon locating him in the trailer (para. 39). The Dissent based this conclusion on the totality of the evidence given by the officer, and held that even though he was unable to properly articulate the technical legal terminology on this issue, that did not invalidate the fact that he acted in a manner consistent with having the subjective belief of reasonable grounds (para. 43).

***(iii) Proper Announcement***

The issue of whether the police in the *Feeney* case gave adequate announcement prior to their entry into the trailer was not resolved by the Majority. It was unnecessary to do so, since the Majority had already decided that the arrest was unlawful for failing to meet either the subjective or objective tests for reasonable grounds. However, the Majority did suggest that the announcement was inadequate because the investigators "were not denied admission, nor did they announce their purpose before forcing entry" (para. 141).

The authors submit that, on the facts of *Feeney*, this ruling is an absurdity, since Feeney was asleep and the police knew it. The Dissent also saw the absurdity of this ruling and held that:

> after knocking on the door, calling out "police" and receiving no answer, they were perfectly entitled to assume that [Feeney] was either asleep or ignoring their requests to enter... it would have been useless for them to have called out their purpose for entry. On the contrary, the only effective way to satisfy the notice requirement was to suspend its delivery until [Feeney] was in a position to receive it. (para. 55)

***Lawfulness of the Arrest - Is the Law Itself Reasonable?***

The Majority next considered whether the second leg of the Collins Test was satisfied (*i.e.* whether the law itself was reasonable). Shockingly, the Majority held that "even if the police met the standards of *Landry* and the other cases, a warrantless arrest in the circumstances of the case at bar following a forcible entry is no longer lawful in light of the *Charter*" (para. 152).

Although the Majority conceded that the Landry Test attempted to strike a proper balance between society's interests and individual privacy interests (para. 157), they concluded that it no longer properly protected the privacy interests of the individual because somehow the importance of privacy of the home had increased "significantly" with the advent of the *Charter* (para. 158). This was a stunning revelation since the Landry Test has been applied by the police and accepted by the courts for the 14 years since the *Charter's* inception.

The Dissent did not consider the constitutionality of the Landry Test generally. The Dissent did rule, however, that the Landry Test would constitute a reasonable limit on a person's expectation of privacy, even in light of the *Charter,* in some cases.

## The New Rule

According to the Majority, it is now insufficient to comply with the Landry Test *or* have an arrest warrant to enter a residence for the purpose of arrest. In order to satisfy the trespass issue inherent in the right to privacy, a warrant must also be obtained which identifies the dwelling house to be searched and specifically gives authorization to enter for the purpose of arrest (*i.e.* a "warrant of entry"). Recognizing that there is no provision in the *Criminal Code* for such a "warrant of entry", the Majority held:

> If the *Criminal Code* currently fails to provide specifically for a warrant containing such prior authorization, such a provision should be *read in.* (para. 163) (emphasis added)

Apparently the investigators could have simply watched the windowless trailer while someone went to get a warrant back in Williams Lake (para. 167). In the opinion of the authors, this view is overly

simplistic and does not take into account the realities of the situation. For example, it assumes that in 1991 a justice of the peace or even a judge would have granted such a "warrant of entry" when no provision existed in law to grant it. More disturbing, the view of the Majority places the impossible onus on the police to see into the future and predict the rules that the SCC will impose upon them retroactively.

The Majority's arguments are not only unpersuasive but raise issues of their own good faith. There was no logical requirement to retroactively apply this new rule. Even if the Majority felt compelled to overrule the Landry Test, they could have suspended its application in the *Feeney* case because there was no way for the investigators to know about it. In the opinion of the authors, applying the new rule retroactively brings the administration of justice into disrepute.

### *Exigent Circumstances*

According to the Majority, the only exception to the new rule requiring a "warrant of entry" is "hot pursuit". This includes the situation where an officer arrives on the scene shortly after a suspect has taken refuge in a dwelling house, and the officer does not know the identity of the suspect in order to obtain a warrant to arrest. [6] The Majority justified this exception because the officer is acting on the basis of personal knowledge. The Majority did *not* believe, however, that the facts of *Feeney* supported "hot pursuit".

Interestingly, the Majority refused to address the concept of "exigent circumstances" as delineated from "hot pursuit" as an exception to the new rule, but stated ominously, "I do not agree with [the Dissent] that exigent circumstances generally necessarily justify a warrantless entry-- in my view, it is an open question" (para. 162). In any event, the Majority did not accept that *Feeney* was a case of "exigent circumstances" involving the possible destruction of evidence, because the police did not know for a certainty that the evidence existed (*i.e.* were not acting based on personal knowledge).

The Dissent took a more expansive view of the type of situations which might justify a warrantless entry into a dwelling house for the purpose of arrest, holding that hot pursuit is but one example of the type of circumstances which could be considered exigent (para. 65). The Dissent accepted that preventing the removal or destruction of evidence justifies setting aside the strict rules concerning sanctity of the home (para. 72). The Dissent concluded that what constitutes exigent circumstances should not be strictly laid out, but rather should be dealt with on a case-by-case basis (par. 68).

## Section 10

On the issue of whether Feeney was properly advised of his right to counsel, the Majority cited several reasons to conclude he was not. The Majority ruled that because the officer did not give Feeney the *Charter* the moment he touched his leg, "the appellant had his s.10(b) rights violated" (para. 171). This ruling is incredible because it interprets *R. v. Therens*[7] far more strictly than had previously been done. Moreover, the Majority ruled that the rights outlined in *R. v. Manninen*[8] were violated (*i.e.* provide reasonable opportunity to exercise right to counsel and cease questioning until counsel consulted). Here, the Majority made an issue of the fact that no phone existed in the trailer, but failed to properly consider the fact that the accused *declined* to exercise his rights when initially offered at the trailer.

The Majority also ruled that the *Charter* recitation given by police at the scene "did not satisfy the informational requirements of s. 10(b)" (para. 173), but did not state at any point what "informational requirements" were deficient. As a result, the Majority's ruling on this point is not instructive, especially considering that the trial judge and Court of Appeal ruled that police complied with s. 10(b).

On the right to counsel issue the Dissent held that the law does not require the police to advise a suspect the instant he is detained. The Dissent held that the police must be given some latitude to assess and gain control of a situation before proceeding (para. 100). In the present case, the Dissent found the following factors made it reasonable for the investigators to temporarily delay giving Feeney his *Charter* rights: (a) the violent nature of the case; (b) the uncertainty facing the officers upon entering the trailer as to how the suspect might react; (c) they were walking into a dark room; and (d) the suspect was apparently asleep. The Dissent concluded that it was inconceivable that the few minutes delay involved could amount to a *Charter* breach (a strong condemnation of the Majority's finding) (para. 100).

## The Warrant

The police subsequently obtained a search warrant for the money, cigarettes, and the accused's shoes. The Majority ruled that the warrant was issued on information obtained as a result of constitutional violations; specifically, the initial entry of the trailer (unlawful arrest), the initial interview (unlawful arrest and right to counsel violation), and the subsequent interviews (right to counsel violation). Consequently, the Majority ruled that "the search and seizure under the warrant also violated s. 8."

## Fingerprints

After the accused was taken to the police station, he was fingerprinted. The accused's fingerprints matched prints found on the victim's refrigerator and on an empty beer in the victim's truck. *R. v. Beare*[9] held that fingerprinting as an incident to a lawful arrest did not violate the *Charter*. In the present case, however, the Majority held that the arrest was unlawful and involved a variety of *Charter* breaches. The Majority found there was a further violation of s. 8 of the *Charter* relating to the fingerprints.

## Exclusion of Evidence Under Section 24

Section 24(2) of the *Charter* allows for the admission of evidence improperly

obtained, provided the administration of justice would not be brought into disrepute. Notwithstanding that the trial judge, Appeal Court, and Dissent found that the police were acting in good faith, the Majority not only found otherwise, but used unjustifiably harsh words to characterize police conduct in this case. For example, the Majority stated the police "flagrantly disregarded the appellant's privacy rights and moreover showed little regard for his s. 10(b) rights" (para. 195). Citing *R. v. Kokesch*,[10] the Majority stated the police must be taken to be aware of judicial decisions and the circumscription of police powers that the judgments represent. In this case "the police either knew they were trespassing, or they ought to have known" (para. 189). The significance of the Majority's ruling is that if the police do not know what the Courts have decided, the police will be deemed to be acting in bad faith.

As a result, all the evidence (including the shoes, cigarettes, and money) was ruled inadmissible because in the opinion of the Majority, "The serious disregard for the appellant's *Charter* rights... suggests that the admission of the evidence would bring greater harm to the repute of the administration of justice than its exclusion" (para. 198). The Majority allowed the appeal, set aside the conviction, and ordered a new trial.

The Dissent is diametrically opposed to the Majority decision on every important issue in the case. While the Majority chastised the investigators for almost everything they did in the course of the investigation, the Dissent stated:

> ...from the first stages of the investigation through to the apprehension of the appellant the police proceeded in a forthright and proper manner; indeed, had the police not moved immediately to arrest, it is likely that they would have been criticized for allowing a murderer to continue to remain at large in the community (para. 116).... Given the brutality of the murder scene and the seeming randomness of the act, there is little doubt that the police felt obliged to act quickly in order to prevent further violence of that nature in the community. For this foresight, they should be commended, not rebuked (para. 117).

## Implications for the Police

The full impact of the *Feeney* case cannot be judged at this time. The most obvious implications for the police are:

1. The Landry Test will no longer apply as a general rule. The new rule is that "warrantless arrests in dwelling houses are prohibited," except in the case of "hot pursuit." The issue of "exigent circumstances" is not resolved at this time.

2. An arrest without permission in a dwelling house is only authorized where either:

   a. police have an arrest warrant, have also obtained a "warrant of entry" and have made proper announcement before entering; or

   b. the police are conducting an investigation but have not yet obtained a warrant for arrest. In these cases, the police must comply with the Landry Test, obtain a "warrant of entry" and make proper announcement before entering.

3. The "warrant of entry" must be based upon reasonable and probable grounds to believe the suspect is within the specified premises at the time the warrant is sought. It must identify the address to be searched and specifically authorize entry into that premises to search for the suspect (whether named or not).

4. Authority for the issuance of such a warrant of entry does not exist in the *Criminal Code*. As an interim measure it appears that s. 487 warrants may be utilized with some modifications. Check with your department for direction on this issue. In the long-term, the federal government may consider amendments to the *Criminal Code* to address any statutory deficiencies.

5. The meaning of detention/arrest may have been expanded because the Majority concluded that it arises at the moment of detention. (*i.e.* in *Feeney* the moment the investigator touched Feeney's leg). If this is the case, then police officers may have to begin reciting a suspect's rights under the *Charter* as soon as they initiate contact with a suspect, regardless of other considerations such as the police officer's safety. The Dissent in *Feeney* found that there is some justifiable latitude as to when the *Charter* be given. Hopefully, the SCC will provide clarification on this issue and hopefully the view of the Dissent will prevail.

6. The definition of "bad faith" may have been expanded to include situations where the police act contrary to a court ruling because they are unaware of it. In *Feeney*, the Majority made it clear that the police "ought" to know what the Courts have decided. If not, according to the Majority, the police will be deemed to be acting in bad faith. This ruling should be a "wake-up" call to police management that someone within each police agency must be designated to monitor case law, and front line officers must be provided with frequent legal updates to ensure their compliance with both statutory and case law.

## Conclusion

It appears to the authors that the Majority judged the police with unnecessary harshness (but, paradoxically, never criticize the murderer). In this case, the police were investigating the most serious of all crimes in the field, acting quickly in order to apprehend the offender (which is in the interests of all individuals in society), without the benefit of hindsight and law clerks researching the law at their leisure. Significantly, the trial judge, the Court of Appeal, and four justices of the SCC found, in hindsight and with great deliberation, that the police were acting properly. Further, it appears that the Majority analysis occurred in a judicial vacuum unconnected to investigative, operational and common

sense realities.

Finally, the SCC has to answer for its own good faith. The police cannot be expected to function in such a chaotic legal atmosphere, where even the "best" legal minds in the country cannot agree on basic issues. In such cases, it would appear only fair that police be given the benefit of the doubt. The SCC, over the last few years, has consistently failed to provide clear, unified or deliberate direction to the police on fundamental issues. *R. v. Stillman*[11] is another recent case where the SCC rendered a decision which fundamentally fails to provide guidance to the police, in particular on the issue of exclusion of evidence under s. 24 (2) of the *Charter*. The result has been complete chaos. Such divisive and impractical decision making and conduct by the SCC makes the job of the police (not to mention lawyers and judges) extremely difficult. It also renders unfair the opinion expressed by the Majority in *Feeney* that the police ought to know the common law or else be deemed to be acting in bad faith, since the law is so difficult to decipher from SCC decisions.

What is particularly disturbing about this case is that the Majority do not explain how a provincial court judge or justice of the peace (who do not have inherent authority) have the power to "read in" provisions. It is also unforgivable that such a major shift in law would be made without warning to the legislators or time to develop a legislative response. The authors reject the assertion of Feeney's counsel that the Majority was "well aware of the immediate ramifications" of this case[12]. While some defence counsel may "scoff" at the 2,700 cases reportedly affected in B.C., that number only reflects data from 38% of the RCMP detachments in B.C. and did not include municipal cases. The actual number of cases affected is much higher and the national figures will be in the tens of thousands.

Finally, it appears to the authors that the balance between society's interests and the individual's privacy interests, as articulated in *Landry*, have been abandoned by this case. What the Majority has failed to understand is that "privacy" rights are a legal fiction unless one is able to enjoy the more fundamental right to "liberty and security". If one cannot be secure in the knowledge that criminals who break into one's home will not be tolerated by society, "privacy" has no practical meaning. Considering the facts of this case, it seems obvious that it is preferable to have the police enter the dwelling house of a suspected murderer without permission in order to arrest than to have criminals invade one's dwelling house with almost certain impunity as a result of laws that do not have the interests of the innocent as a priority. Ironically, the Majority talks of the importance of "increased protection of privacy of the home" , but what about the "privacy" of the victim, Mr. Frank Boyle, and what about increased protection for each individual of society?

In a letter to the *Vancouver Sun*,[13] Richard and Leona Heard, members of the victim's family wrote:

> On June 8, 1991, our stepfather and father-in-law, Frank Boyle, was bludgeoned to death in his home in Likely, B.C., by an intruder who hit him six times on the head with a crowbar.... [He] was 86 years old, went to church each Sunday and took mail to people who couldn't get out. He fed birds and squirrels....Does our Charter of Rights allow our police departments to do their jobs of protecting law-abiding citizens of our country?....How do we teach our children and grandchildren to have respect for the laws of our country, when they see this kind of decision handed down by the highest court in the land?....Is this Canadian justice? Doesn't anybody care?

To Richard and Leona's question, the answer is found in Sopinka J.'s ruling, "Any price to society occasioned by the loss of such a conviction is fully justified in a free and democratic society which is governed by the rule of law" (para. 198). The authors suggest that society would not agree with the Majority that "any price" is justified, and we wonder with the Heards, "Is this Canadian justice?"

**Endnotes**

[1] [1997] S.C.J. No. 49 (Q.L.) File No. 24752 (22 May 1997).

[2] [1990] 2 S.C.R. 1199.

[3] *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145.

[4] *R. v. Collins*, [1987] 1 S.C.R. 265.

[5] *Eccles v. Bourque*, [1975] 2 S.C.R. 739, *R. v. Landry*, [1986] 1 S.C.R. 145 and *R. v. Storrey*, [1990] 1 S.C.R. 241.

[6] *R. v. Macooh*, [1093] 2 S.C.R. 802, which involved a suspect fleeing from police after committing a summary conviction offense.

[7] [1985] 1 S.C.R. 613.

[8] [1987] 1 S.C.R. 1233.

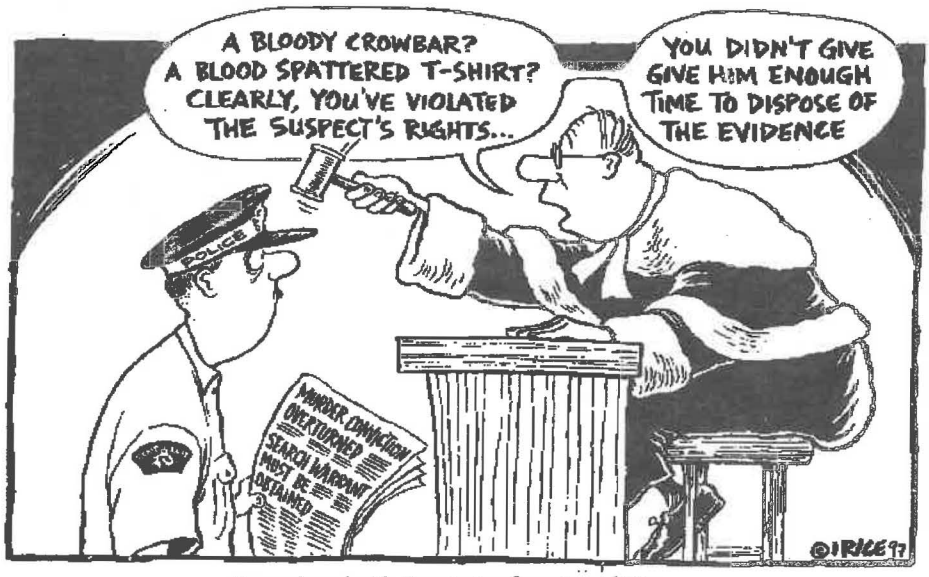
[9] [1988] 2 S.C.R. 387.

[10] [1990] 3 S.C.R. 3 at 32.

[11] [1997] 1 S.C.R. 607.

[12] Jim Bronskill, "Trial lawyers angry at B.C. request to Supreme Court", *The Weekend Sun* (21 June 97) at A3.

[13] Letters to the Editor (30 May 1997) at A20.

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# New Leadership Development Program Leads to Degree

Pat Lawrence

The Justice Institute (JI), in partnership with Simon Fraser University (SFU), is offering a unique Leadership Development Program targeted to start in January, 1998 (the Program). The Program involves part-time study over a three year period leading to a Bachelor of General Studies degree - Integrated Studies Program with a focus on Justice and Public Safety Leadership.

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- mentor and coach others;
- effectively deal with conflict and solve problems;
- do the right things, not just the popular things; and
- have personal credibility.

The Program is tailored to highly motivated mid-career professionals with at least ten years experience in justice or public safety. This group sees the attainment of a university degree as a desirable objective for its intrinsic value as well as for career development. The Program will appeal to those professionals who want the opportunity to get a university degree while continuing to work full time.

Once admitted to the Program, students will be placed into a team of individuals from other Justice and Public Safety organizations. This team progresses through a schedule of courses as a whole, allowing leaders to share experiences and form a support network that can be of benefit long after the studies are over. As mentioned, the Program is designed to be completed on a part-time basis over three years. Students take two courses each semester (three semesters per year). The current work experience of each student provides a rich source of material for the classroom.

The first team of students will begin the Program next January at the Justice Institute campus in New Westminster. Future programs will be more accessible with some parts being delivered using distance education technologies.

Entry into this Program is at an advanced level. Instead of having to complete the usual 120 credits required to obtain a Bachelor's degree, students who successfully attain 60 credits will receive a Bachelor of General Studies - Integrated Studies Program from SFU.

The 60 credit requirement is made up of 48 core and 12 electives courses. Topics in the core course of study include:

- organizational behaviour
- ethnic relations
- research methods
- human rights and civil liberties
- conflict resolution
- gender relations
- human resources management
- ethical decisions and public policy
- organization development and change
- public policy issues in justice and public safety

The elective courses can be chosen from three streams: criminal justice, public safety and a general category. In addition to the core and electives, students will be required to complete a major project connected to their workplace. All courses will be delivered using methods that foster development skills in problem solving, teamwork, critical thinking, writing, and presentation.

Tuition for the entire Program is $13,500, to be paid in instalments over three years.

To be considered for admission into the Program, students are required to have the following:

- some formal post-secondary education OR an acceptable combination of technical training plus in-house training and some university or continuing education courses
- at least 10 years work experience in a relevant field
- basic writing skills and computer literacy
- support of current employer

In the coming decades, leaders in the fields of justice and public safety are certain to face unprecedented challenges which require innovative and visionary solutions. The success a leader attains in tackling these problems will be directly related to the training he or she receives. The JI and SFU have created this unique Leadership Development Program in response to this need.

**For Further Information Please Contact:**

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# Operational Notes

***R. v. Stillman (SCC)***

Ruled that evidence conscripted unlawfully from an accused will generally be excluded under s. 24(2) of the *Charter (i.e.* trial fairness violated). Evidence will be *non-conscriptive evidence* if the accused was not compelled to participate in the creation or discovery of evidence (*i.e.* it existed independently of the *Charter* breach in a form useable by the state). Evidence will be *conscriptive* when an accused, in violation of his / her *Charter* rights, is compelled to incriminate him / herself at the behest of the state by means of a (a) statement, (b) use of the body, or (c) the production of bodily samples. As a result, even real evidence can be excluded if the accused is conscripted into producing the evidence contrary to a *Charter* right.

***R. v. Godoy* (Ont. C.A.)**

Police had authority to enter residence without permission (and despite denial by occupant) in response to a disconnected 911 call. While the police did not have reasonable and probable grounds to believe an indictable offence had been committed, they were obliged to investigate further the distress call. Forced entry was justified to determine the cause of the distress and give aid if necessary. The nature of a 911 hang-up call leads to a reasonable belief that someone inside was in serious distress and their life or safety could be in danger.

***R. v. Bennet* (BCSC)**

Accused is not entitled to call legal counsel prior to submitting to a roadside screening test. Allowing accused to call a lawyer prior to test created delay and demand was then outside purview of "forthwith". Officers must be unequivocal that accused is not entitled to call a lawyer prior to test.

***R. v. Leipert* (SCC)**

Identity of confidential informer or information that may tend or have potential to identify informer is strictly confidential and not subject to disclosure to defence. The "informer privilege" is sacrosanct. There is only one exception: where the accused demonstrates that the identity of the informer is essential to proving innocence.

***R. v. Whitford* (Alta. C.A.)**

The Crown cannot use statements obtained in violation of the *Charter* to impeach an accused's credibility. This is contrary to the B.C.C.A. in *R. v. Cook* which held that a statement obtained in violation of the *Charter* could be used provided it was not used to incriminate as part of the Crown's case.

***R. v. Calder* (SCC)**

Held that a statement obtained from the accused in violation of the *Charter* is inadmissible as part of the Crown's case to challenge credibility.

***R. v. Goodwin* (BCCA)**

There is no requirement that a complainant suffer ill health or a major disruption in his / her life to obtain protection against criminal harassment.

***R. v. Carosella* (SCC)**

The loss or destruction of evidence against an accused can be grounds for a stay of proceedings under the *Charter*. The loss or destruction of evidence can affect the ability of an accused to make full answer and defence as provided by s. 7 of the *Charter*.

***R. v. Mitchell* (BCSC)**

Court ordered a stay of proceedings where a hospital had destroyed the blood sample of a sexual assault victim. The victim was taken to the hospital by police where a "rape kit" was utilized. A blood sample was taken. It was later destroyed. The accused argued the sample was crucial to showing the complainant's intoxication level. The Court found there was a reasonable possibility that the information contained in the sample was logically probative to an issue at the trial (*i.e.* credibility) and stayed the charge.

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