# ISSUES OF INTEREST

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# Novel Police Investigation Techniques


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## Introduction

In recent years, Canadian police have adopted some novel investigational techniques. The courts have traditionally supported creative law enforcement activities, but supervise illegal and unconstitutional police conduct by application of the doctrines of abuse of process and entrapment. The courts recognize that criminal activity is ubiquitous in our society, and that the ingenuity of criminals must be matched by that of the police.[1] The police are not to be governed by the Marquess of Queensbury Rules,[2] nor are they expected to be chivalrous.[3] It is also recognized that consensual crimes (*e.g.* prostitution, gambling, drug offences and the like) are particularly difficult to investigate by traditional methods. The use of trickery, deceit, undercover officers and agents is accepted by the courts as necessary in many circumstances.

This article will review the doctrines of abuse of process and entrapment and two police techniques which have been approved by the courts in the past year, namely "reverse stings" and "target plants." It is hoped that this article will also assist officers in determining what is acceptable by the courts when considering novel police techniques.

*THIS ISSUE*



## Abuse of Process

The courts have a residual discretion to stay proceedings where police conduct is such that it violated the community's sense of fair play and decency.[4] Where an accused is unfairly treated by oppressive state action, the court will not allow its processes to be tainted or tarnished by permitting a prosecution to continue.[5] A stay of proceedings, however, will only be granted in the clearest of cases. Crime must be repressed in a manner which is consistent with the fundamental values of our society.[6] Thus, a police officer cannot pose as a chaplain or duty counsel or inject pentothal into suspects in an effort to obtain incriminating statements. However, it is now clearly legitimate, in certain circumstances, to pose as a drug trafficker, prostitute or contract killer in an effort to lure unwary criminals.

Entrapment is a form of abuse of process. It occurs when:

a) the authorities provide a person with an opportunity to commit a crime without acting on reasonable suspcion that the person is already engaged in criminal activity or pursuant to a *bone fide* inquiry, or
b) although having such a reasonable suspicion, or acting in the course of a *bona fide* inquiry, they go beyond providing an opportunity and induce the commission of an offence.[7]

Factors that the courts will consider in an entrapment case include the following:

- The type of crime being investigated and the availability of other techniques for the police detection of its commission;
- whether an average person, with both strengths and weaknesses, in the position of the accused would be induced into the commission of a crime;
- the persistence and number of attempts made by the police before the accused agreed to committing the offence;
- the timing of the police conduct, in particular whether the police have instigated the offence or became involved in on-going criminal activity;
- the proportionality between the police involvement, as compared to the accused, including an assessment of the degree of harm caused or risked by the police, as compared to the accused, and the comission of any illegal acts by the police themselves;
- the existence of any threats, implied or express, made to the accused by the police or their agents;
- whether the police conduct is directed at undermining other constitutional values.[8]

Entrapment arguments are rarely successful. Undercover operations in high drug trafficking areas, such as the Granville Mall area in Vancouver, are quite appropriate. The police can target anyone in the area providing there is a *bona fide* investigation and a reasonable suspicion that criminal activity is occurring in the area.[9]

It is also legitimate for an undercover police officer, posing as a new patient, to offer sexual services to a doctor in exchange for a narcotics pre-

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scription, where there is suspicion that the doctor is already engaged in similar conduct.[10] Similarly, undercover officers can pose as police officers seeking payment from a lawyer in return for referral of clients where the police believe the lawyer is paying referral fees.[11]

The entrapment defence has been allowed when an undercover officer pretended to seduce a lonely Lebanese immigrant,[12] where the police conducted investigations in bars where there was no suspicion that criminal activity was going on,[13] and where they targeted an individual for an extensive undercover operation without reasonable suspicion that the individual was engaged in criminal activity.[14]

## Reverse Stings

A reverse sting is an operation in which law enforcement officers offer or attempt to deliver or sell, or actually deliver or sell, alleged contraband. In the United States, the reverse sting technique is used frequently to target purchasers of drugs and pornography, and public officials suspected of receiving bribes.

In Canada objections have been made that the police are committing the crime of trafficking, as defined in the then *Narcotic Control Act*, if they engaged in such conduct, and that police illegality would inherently constitute an abuse of process. In *R. v. Shirose and Campbell*,[15] a police agent introduced RCMP officers to hashish traffickers. The operation was approved by very senior RCMP officers and Crown prosecutors. The police offered to sell a ton of the drug to the targets, and collected a $270,000.00 down payment. Carthy J.A. found that the police had offered to sell a narcotic, and that their conduct constituted the crime of trafficking. Carthy J.A. was critical of the police tactics in the circumstances. Fortunately, however, he refused to stay the proceedings in this case, noting that:

a) the police had taken guidance from a Quebec case which had described the reverse sting as a "brilliant" technique; and
b) the police had targeted high level criminals in scenarios which would not have attracted innocent citizens.[16]

Similarly, in *R. v. Mathiesson*,[17] the Court found that the police had committed the offence of money laundering during a storefront undercover operation. Mathiesson had attempted to launder $92,500.00 through a RCMP incorporated company. The Court went on to find, however, that the police illegality did not constitute an abuse of process, as the police were motivated by good faith and had properly targeted the accused drug traffickers.

In the face of these cases, however, Parliament has recently taken steps to provide for the specific approval of reverse stings. The *Controlled Drugs and Substances Act (Police Enforcement) Regulations* now provide exemptions for officers engaged in legitimate investigations. On the basis of the case law, it is probable that any future reverse sting operations not specifically covered by this legislation will be found to be both unlawful and an abuse of process.

## Target Plants

In recent years, police agencies have redirected undercover resources to the investigation of serious crimes, such as murder. A typical "target plant" investigation involves police officers posing as criminals, befriending the targets, and involving them in pseudo criminal activity.

Once the relationship is established, the officers disclose details of the crimes they have committed, and then require the targets to disclose their involvement in serious crimes in order to prove their legitimacy as a criminal. It is astounding how often murderers will disclose their crimes to undercover officers. If the disclosure accurately describes the killing, and provides details of the crime known only to the killer and the police, then a conviction is almost inevitable. This is particularly so where D.N.A. testing is also used to obtain

samples on the basis of admissions to undercover officers.

The target plant technique is attractive to police as there is no obligation to comply with the rights guaranteed by s.10 of the *Charter* (*i.e.* right to counsel), or with the common law requirement that a statement must be voluntary to be admissible. Section 10 does not apply as the targets are not detained. Thus, a target who asks to speak to counsel cannot be actively questioned by an undercover in cells,[18] but can be approached as soon as he or she is released. The voluntariness requirements do not apply because, at law, undercover officers are not "persons in authority."[19]

Several unsuccessful challenges have been made in cases involving this technique. In *R. v. Unger and Houlihan*,[20] the police posed as gang members and extracted a confession from the accused. In *R. v. McIntyre*,[21] the accused was the suspect in the murder of a nun. He was arrested, and refused to give a statement. The police set up an undercover operation in which undercover officers were to approach the appellant for the purposes of obtaining information from him. An officer was placed in cells. He told the accused that he was a Montreal criminal involved in the illegal cigarette trade, prostitution, and other criminal activities. He arranged to meet the accused outside of jail. The officers pretended to be involved in prostitution, the sale of black market cigarettes, and the sale of firearms. After creating a friendship with the accused, the undercover officers offered him a job on the condition that he be able to kill if necessary. They asked the accused to give them proof from his past to show that the accused was capable of killing. The accused refused to answer at first. The police officers pushed for answers. Finally, when the accused realized that this was his only way of getting the job, he described in detail how he had killed the nun. The accused argued that the statement given to the police violated his ss.7 and 10(b) rights.

Ayles J.A., in the New Brunswick Court of Appeal said:

> In this case, police officers passed themselves off as criminals to win the trust of the appellant so that he would make a statement. Here, there was no reason to protect the appellant from the power of the state. He was free in his comings and goings and he was in no way restricted by the police. There was no coercion in this case. The appellant could have left the police officers and had nothing further to do with them at any time. The statement therefore should be received in evidence. It will then be the responsibility of the jury to determine the weight to be given to the statement.[22]

In the Supreme Court of Canada, Gonthier J. simply said:

> The appellant argues that his statements made to undercover officers after he had been released but while he was still the subject of a murder charge were inadmissible under sections 7 and 24(2) of the *Canadian Charter of Rights and Freedoms*. We share the view of the majority that the accused was not detained in the meaning of *Hebert* and *Broyles*. Furthermore, the tricks used by the police were not likely to shock the community or cause the accused's statements not to be free and voluntary. The appeal is dismissed.[23]

Similar rulings have recently been made by the British Columbia Court of Appeal in *R. v. Roberts*,[24] and *USA v. Raffay and Burns*.[25]

## Conclusion

The courts will give the police wide latitude in order that the community's interest in crime detection and prevention is met. Police officers who engage in activities within the boundaries defined by case law will be applauded by the courts. Those who step outside the boundaries, and commit crimes or *Charter* breaches will be condemned, as the R.C.M.P. were, in the following extract from *R. v. Evans*:

> Before concluding these reasons for judgment I should say that I found it difficult to believe that these events took place in Canada. We pride ourselves on an even-handed system of justice. That system of justice should preclude actions such as those taken by the undercover officers. Undercover operations are not subjected to Charter scrutiny in the same manner as actions taken by police operating in their normal capacity. It would be unfortunate if the increasing use of police undercover officers led to behaviour of the sort exhibited in this case. Undercover operations are very useful in police work. However, they do not allow the police to employ techniques that are antithetical to the principles of fairness embodied in the Charter.[26]

### Endnotes

[1] *R. v. Mack* (1988), 44 C.C.C .(3d) 513 (S.C.C.) per Lamer J. at 522.
[2] *Rothman v. The Queen* (1981), 59 C.C.C .(3d) 30 (S.C.C.) per Lamer J. at 75-76.
[3] *R. v. Kirzner* (1977), 38 C.C.C. (2d) 131 (S.C.C.) per Laskin C.J.C. at 135-137.
[4] *R. v. Jewitt* (1985), 12 C.C.C. (3d) 7 (S.C.C.) per Dickson C.J.C. at 10-14.
[5] *R. v. Conway* (1989), 49 C.C.C. (3d) 289 (S.C.C.) per L'Heureux Dube J. at 302-304.
[6] *Ibid.*
[7] *Mack, supra,* note 1 at 599.
[8] *Ibid.,* at 560.
[9] *R. v. Barnes* (1991), 63 C.C.C. (3d) 1 (S.C.C.) per Lamer J. at 11.
[10] *R. v. Voutsis* (1989), 47 C.C.C. (3d) 451 (Sask C.A.).
[11] *R.v. Wijesinha* (1994), 88 C.C.C. (3d) 116 (Ont. C.A.).
[12] *R.v. El Sheik Ali* (18 August 1993), Brampton Reg. No. 3431/93 (Ont. G.D.).
[13] *R. v. Kenyon* (1990), 61 C.C.C. (3d) 538 (B.C.C.A).
[14] *R. v. Evans* (30 September, 1996), Chilliwack Registry X31722 (B.C.S.C.).
[15] (1997), 115 C.C.C. (3d) 310 (Ont. C.A.).
[16] *Ibid.*; see also *R. v. Lore* (1997), 116 C.C.C. (3d) 255 (Que C.A.). For some of the legal advice implications this has for police, see Craig S. MacMillan and Stephen Thatcher, "Bridging the Gap - Who Provides Legal Advice to the Police" (1997) 48:2 *Issues of Interest* 5.
[17] (30 June, 1995), Edmonton Reg. 9203-3966-C4 (Alta. Q.B.).
[18] *R. v. Hebert* (1990), 57 C.C.C. (3d) (S.C.C.).
[19] *R. v. Rothman* (1981), 59 C.C.C. (2d) 30 (S.C.C.).
[20] (1994), 83 C.C.C. (3d) 228 (Man C.A.) (application for leave to appeal dismissed).
[21] *R. v. McIntyre* (1993), 344 A.P.R. 266 (N.B.C.A.), affirmed [1994] 2 S.C.R. 480.
[22] *Ibid.*
[23] *Ibid.*
[24] (2 April, 1997), Vancouver Reg. No.CA021174 (B.C.C.A.).
[25] (2 April, 1997), Vancouver Reg. No. CA021174 (B.C.C.A.).
[26] *Supra*, note 14.

# Articulable Cause: Police Common Law Authority to Detain a Suspect Absent Reasonable Grounds for Arrest

## Introduction

At a time in the history of law enforcement when it appears that an ever-increasing number of court decisions do nothing but erode police powers and hamper an officer's ability to investigate and prevent crime, it would seem appropriate that any decisions setting out factors that actually assist operational policing should be noted. To that end, this article will discuss the police officer's authority at common law to temporarily detain or search a suspect in circumstances where reasonable grounds to make an arrest do not exist. This type of detention has been referred to by the courts by a number of different terms, the most common and descriptive being "investigative detention."

It is well-settled law that police powers are limited to those provided by statute or common law. The courts have also consistently recognized that a police officer's duty at common law includes the duties to prevent and investigate crime. Most officers will be familiar with the cases dealing with the random detention of motorists during "road blocks" or "checks stops" designed to detect impaired drivers.[1] These cases have held that detention of a motorist in those situations, although arbitrary, is justified as an ancillary police power (at common law) and is a reasonable limit on the right not to be arbitrarily detained under s. 9 of the *Charter*. However, these cases were decided within the context of police roadblocks, which are clearly intended to protect those who use the public roadways from the danger of impaired drivers.

Another type of detention (where an arrest is not made) arising out of the impaired driving cases is detention pursuant to a breath demand. However, this type of "detention" only arises out of a situation where there are reasonable grounds to believe an impaired driving offence has been committed, as a peace officer must have reasonable grounds to make the breath demand in accordance with section 254(3) of the *Criminal Code*.

What is not clear from the "roadblock" cases is when any type of detention outside of an impaired driving scenario will be seen as authorized within a police officer's common law duties, and specifically, in a situation where reasonable grounds do not exist. Although it is clear that there is no statutory power at this time authorizing the detention of a suspect absent reasonable grounds to believe an offence has occurred, the decision of the Ontario Court of Appeal in *R. v. Simpson*[2] is particularly interesting with regard to the "investigative detention" issue.

## The *Simpson* Case

The accused was a passenger in a motor vehicle which was stopped by a police officer because he had observed it at a suspected "crack house." The officer knew nothing about the source of the information about the "crack house," and had no reason to believe that the information was reliable. The officer candidly acknowledged that his decision to stop the vehicle had nothing to do with the enforcement of laws relating to motor vehicles, nor did he rely on any specific statutory authority (such as then ss. 10 or 11 of the *Narcotic Control Act*[3]). In fact, the officer testified that he intended to pull the vehicle over and ask the occupants where they had been to see what story they were going to give and whether they would trip themselves up and give the officer more grounds for arrest. After stopping the vehicle, the officer asked the occupants to get out. The officer noticed a bulge in the accused's pocket and asked the accused what was in the pocket. The accused replied, "Nothing." The officer then asked the accused to remove the object from his pocket and a baggie containing cocaine was discovered. The accused was convicted at trial of possession of cocaine for the purposes of trafficking and appealed that conviction.

## The Legitimacy of "Investigative Detention"

The Ontario Court of Appeal found in *Simpson* that the officer had "no articulable cause" to justify the detention of the accused that occurred in this case, and the accused was acquitted. However, the Court clearly recognized that common law police powers can, in appropriate circumstances, authorize some forms of detention for investigative purposes. In fact, Doherty J. stated quite unequivocally:

> I have no doubt that the police detain individuals for investigative purposes when they have no basis to arrest them. In some situations the police would be regarded as derelict in their duties if they did not do so.[4]

By way of definition, the Court went on to say:

> The wide duties placed on police officers in relation to the prevention of crime and the enforcement of criminal laws encompass investigations to determine whether criminal activities are occurring at a particular location as well as efforts to substantiate police intelligence.[5]

For operational purposes then, the question becomes one of when will an investigative detention be justified at common law? The *Simpson* case sets out the clear proposition that "where an individual is detained by police in the course of efforts to determine whether that individual is involved in criminal activity being investigated by police, that detention can only be justified if the detaining officer has some articulable cause for the detention." It stands to reason then, that *articulable* cause falls short of *reasonable grounds.* The Court in *Simpson* went on to consider a number of definitions of the notion of articulable cause, which originated in American jurisprudence related to police "stop and frisk" practices.

In *Terry v. Ohio*, Chief Justice Warren said:

> ...the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the investigative detention].[6]

The case of *U.S. v. Cortez*, provided a further articulation of the concept of articulable cause:

> ...the totality of the circumstances - the whole picture - must be taken into account. Based upon that picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.... From [this], a trained officer draws inferences and makes deductions - inferences and deductions that might well elude an untrained person.... Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, *but as understood by those versed in the field of law enforcement.*[7] (emphasis added)

## The *Lal* Case

In *R. v. Lal*,[8] the British Columbia Supreme Court also upheld a detention and search without a warrant based on "articulable cause." In this case, officers were assigned to guard a residence in Vancouver after two brothers and an innocent citizen were killed during a conflict between two rival gangs. The officers were advised that the owner of a canary yellow Acura NSX (the only one in Vancouver) should be considered armed and dangerous. While conducting surveillance a few days later the officers saw the car a few blocks from the protected residence. The officers had no warrant or suspicion that the driver had done anything wrong, nevertheless they stopped the vehicle and searched the occupant. The officers waited 18 minutes for back-up and the search was conducted under cover. Charges for carrying a concealed weapon and possession of a restricted weapon were laid against the driver.

The Crown asserted the police had common law authority to protect the public which justified the warrantless search. Mr. Justice Mackenzie found that the police had articulable cause for the search. Based on the concern that the accused presented a threat of violence to the protected family and the need to protect the public from a violent encounter the Court found the detention and search lawful.

## Practical Applications

For operational police purposes then, it should be sufficient to think of articulable cause as suspicion based upon the totality of the circumstances (as opposed to inarticulate hunches). As a practical example, a reasonable *suspicion* that a person had just committed a violent crime and is in flight from the scene of that crime could justify detention (absent reasonable grounds to make an arrest) in order to quickly confirm or refute the suspicion. Such an example arose in *R. v. Elshaw*,[9] where a man who had been seen going into bushes with two young boys was placed in the back of a patrol wagon after a witness pointed him out to police. The suspect was held there until the officers could speak to all of the witnesses, which took about five minutes. The suspect was in fact detained where no reasonable grounds for an arrest yet existed, but the detention was justified as necessary for the investigation of the offence, and the detention was for a purpose related to their investigation of possible criminal activity.

As always, it will be crucial for an investigator to be able to clearly articulate all of the circumstances whenever an investigative detention has occurred. The officer must satisfy the court that any "detention short of arrest" was not prolonged or highly intrusive. Justifying that detention will depend on the ability of the individual officer to explain exactly what constituted his or her "articulable cause" in each case. Although the concept can be difficult to explain, the common-law authority to detain for investigative purposes is one that may provide police officers with a valuable tool, keeping in mind the ever-present right to counsel issues.[10]

It is recommended that police officers and departments explore the articulable cause doctrine based on *advice from their respective legal counsel.* At present, it appears that the following propositions are valid:

- it is possible to *temporarily* detain a suspect, *for the purpose of immediately advancing the investigation*, absent reasonable grounds to make an arrest; however, if you have detained a person pursuant to a specific statutory authority you must rely on that authority to justify the stop;
- such detention is referred to as "investigative detention," and can only occur in situations where an officer has "articulable cause";
- "articulable cause" is basically suspicion, based upon the totality of the circumstances (as opposed to inarticulate hunches or other information the officer cannot verify);
- police officers explaining their "articulable cause" must be prepared to fully articulate the circumstances which gave rise to their suspicions.

**Endnotes**

[1] See, *R. v. Ladouceur* (1990), 56 C.C.C. (3d) 22 (S.C.C.); *R. v. Hufsky* (1988), 40 C.C.C. (3d) 398 (S.C.C.); *R. v. Therens* (1985), 18 C.C.C. (3d) 481 (S.C.C.).

[2] (1993), 79 C.C.C. (3d) 482 (O.C.A.).

[3] R.S.C. 1985, c. N-1.

[4] *Supra*, note 2 at 498.

[5] Ibid., at 499.

[6] 392 U.S. 1, 88 S. Ct. 1868 (1968).

[7] 449 U.S. 411, 101 S. Ct. 690 (1981).

[8] (Dec., 1996) Van Reg. (B.C.S.C.).

[9] (1989), 70 C.R. (3d) 197 (S.C.C.).

[10] *Supra*, note 1. Officers must also be cognizant of the fact that failure to form reasonable grounds or articulable common law cause could result in the officer being investigated criminally and/or pursued civilly.

# Criminal Behaviour Analysis

Sgt. Keith Davidson, RCMP, Criminal Behaviour Analysis Unit

## Introduction

*Silence of the Lambs. Millennium. Profiler. Cracker.* Over the past few years, the entertainment industry discovered the effort of law enforcement to apply the academic world's understanding of human behaviour to crime investigation. Think like the killer, get into his head, is the advice often given by the fictional characters. In *Silence of the Lambs* a Federal Bureau of Investigation ("FBI") recruit analyses a killer's every move, anticipates the next one, then is there to catch him. In a popular television series, a profiler walks through a crime scene, receives paranormal visions from a victim or better yet, the killer himself, then reveals details of the crime. Even when the profiler isn't communicating with the dead, the profiler's superior intuition constantly exposes investigators, supervisors, prosecutors and defence lawyers as incompetent and unable to see the obvious. Reality, however, is nothing like the fantasy.

## Overview

*Criminal Behaviour Analysis* uses inductive reasoning or logic to develop reliable conclusions from incomplete information. Inductive reasoning is the process we all use to develop the rules we use to make sense of our everyday world. Criminal investigators and lawyers use it to make sense of crime scenes, to develop lines of enquiry and in part to assess the validity of information provided by witnesses. Inductive logic is a method of discovery, of finding a pattern in chaos, of going beyond the observable facts. When conclusions are presented without their supporting arguments, the accuracy of those conclusions often appear mysterious, magical or even super-natural.

The difference between our everyday use of inductive reasoning and its analytical application is simply a matter of process. Analysts typically formalize and structure the process to ensure the conclusions drawn from the facts are sound. Each theory developed to explain or account for the facts is tested. The method of testing depends on the focus of analysis, the available tools and the education, experience and skill of the analyst.

Criminal behaviour analysis strives, first to understand what happened, then why it happened and finally to understand the type of person who committed the crime. Investigative lines of enquiry, resource and case management strategies, trial and witness examination strategies can then flow from that understanding. There is, at least, potential for the courts to consider the results of criminal behaviour analysis when determining the admissibility, validity and weight of similar-fact evidence.

In Canada, behavioural analysis is performed by police officers who have received extensive training in a field called *Criminal Investigative Analysis*. This training was originally offered to police agencies by the FBI who developed the techniques in the early 1980's. Presently, the *International Criminal Investigative Analysis Fellowship* manages a two-year full-time understudy program, which is the only vehicle for training police officers who are not FBI Agents. Analysts receive training in crime scene reconstruction; forensic pathology; psychology and psychiatry of aggression; behaviour analysis techniques for sexual homicide, sexual assault, child sexual abuse, arson and bombing. Analysts are also taught interview and interrogation techniques, statement analysis, and case linkage analysis. During the program, understudies review an extensive collection of books and articles discussing much of the available research on serial killers, rapists, child molesters, arsonists and bombers. In addition to the academic training, understudies are exposed to hundreds of violent crime cases from Canada and the U.S. in an effort to develop the analyst's personal knowledge and experience surrounding the types of cases he or she will be analysing. Towards the end of the program, understudies analyse dozens of cases under the supervision of experienced profilers. Consequently, Criminal Investigative Analysts bring a different perspective to the table when viewing the same information considered by investigators, lawyers or the court.

As with any analytical product derived through inductive reasoning, criminal behaviour analysis does not create results with mathematical certainty. It is a subjective process, influenced by the available data and the education, experience and skill of the analyst. Recipients are encouraged to critically examine the results and supporting arguments when deciding to accept or reject the opinions offered.

In British Columbia, Criminal Behaviour Analysis is offered to all police agencies within the province and Crown Counsel through the RCMP "E" Division Major Crime Section's Criminal Behaviour Analysis Unit ("CBAU"). Cases of sexual homicide and sexual assault (single or serial) benefit the most from this type of analysis. Cases of non-sexual homicide, home-invasion robbery, serial arson, bombing, stalk-

ing, and threats can also benefit, but the results tend to be more limited.

### CBAU Services

Four principle analytical services are available through the CBAU:

1. *Personality Characteristics and Traits of the Unknown Offender*

   Based on the offender's crime, a description of his or her most probable personality characteristics and traits, social behaviours, education, employment, criminal and relationship histories are provided. When appropriate, his (or her) expected pre- and/or post-offence behaviours are included. Investigative suggestions flowing from the analysis are offered.

2. *Indirect Personality Assessment*

   Based on an assessment of a specific individual's personality, from indirect sources of information (family, friends, coworkers, previous criminal behaviours, probation reports, *etc.*), opinions are offered regarding the probability that he or she committed the crime under investigation. Interview and interrogation strategies, examination or cross-examination strategies and/or investigative strategies can also be developed.

3. *Equivocal Death Analysis*

   When the manner of death (accident, suicide or homicide) is at issue, a detailed examination of the circumstances surrounding the death and the individual's behaviour prior to the death is conducted leading to an opinion regarding the most probable manner of death.

4. *Threat Assessment*

   Based on the material available, opinions may be offered regarding the dangerousness of the threat and some personality characteristics.

Additionally, investigative suggestions are sometimes available. Sergeant Keith Davidson of the Criminal Behaviour Analysis Unit can be contacted by telephone at (604) 264-2949, by fax (604) 264-2936 or through Internet e-mail: keith_davidson@bc.sympatico.ca.

#### Endnotes

[1] Over time, Criminal Behaviour Analysis has also been known as "Criminal Investigative Analysis", "Criminal Profiling", "Psychological Profiling", "Behavioural Profiling" and simply "Profiling".

[2] Richard R. Bélec and Laurent Duguay, *Criminal Investigations: Critical Thinking & Effective Decision Making* (ITOU Structures, Methods and Systems Inc., 1993).

[3] *Ibid.*

[4] To date, in Canada, Criminal Behaviour Analysis has never been used in a criminal or civil court process, other than to form part of an Information to Obtain a Search Warrant. In the United States, however, some courts have accepted expert testimony from police officers trained as "Criminal Investigative Analysts" on crime scene reconstruction, and on case linkage (explaining the similarities and differences between two or more crimes).

## Congratulations

The Editorial Board and Police Academy wish to Congratulate Mr. James W. Jardine, Q.C. on his appointment to the Provincial Court bench. Many of our readers will know Jim, excuse me, his Honour, from his days as a highly respected Crown and defence counsel. We are certain that Judge Jardine will be as valued in judicial circles as he was in the lawyer and police communities.

## Call for Contributions

The Editorial Board invites submissions (750-1500 words) on topical legal and operational policing issues from police officers and individuals in associated professions or disciplines. Articles must be typewritten, double-spaced on letter size paper. Quotations must be indicated and references fully cited in endnotes. Diskette submissions in ASCII format are preferred. If you have any questions contact Craig MacMillan (pager 631-7415) or Paul Tinsley (528-5764). We look forward to reading your submission.

## Operational Notes

**R. v. D.B.G.** (7 March 1997), Victoria Reg. No. 8312 (B.C. Prov. Ct.)

Two youths were arrested late at night for causing a fire. They were held in custody to prevent evidence from being destroyed pending further investigation during daylight. A police officer engaged in a passive cellblock undercover operation and overheard incriminating statements. The Court held that the youths could have been released and they were held primarily to conduct the cellblock operation. Although the youths had been cautioned under s. 56 of the *YOA*, the Court found that special protection must be given to the rights of youths. While an adult who is overheard during a cellblock operation is taken to accept that risk, a youth is not in the same position. The freedom of choice by youth in whether to speak to the police requires that the youth know he or she is speaking to or in the presence of a police officer, especially where an intentional police tactic is being utilized. Compliance with s. 56 is not possible in a cellblock operation, and the statements were inadmissible.

# LEADERSHIP CONFERENCE 98

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