



# ISSUES OF INTEREST



A Journal Devoted to Topical Policing and Legal Issues for Operational Police Officers in British Columbia

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## In Memoriam



Dr. Harry Stevens

It is with great sadness that we must announce that Dr. Harry Stevens, consulting psychologist for RCMP "E" Division Health Services, died peacefully on New Year's Eve after a lengthy battle with cancer.

Dr. Stevens was highly respected and over the last two years he made important contributions to policing and the *Issues of Interest* as a member of the Editorial Board. In addition, as observed by Dr. H.B.C. Ho, the RCMP "E" Division Health Services Officer:

As well as providing psychological assistance to hundreds of members over almost 15 years, Dr. Stevens also provided professional expertise to VICLAS, Major Crimes

Section, Drug Section, Special O, Training and Development, and various other units in "E" Division. He was devoted to our members and to assisting the efforts of law enforcement in any way that he could. Harry was both passionate and compassionate in his work; his enthusiasm and sense of humour were inspirational to many of us. Dr. Stevens will be sadly missed by the RCMP, by "E" Division, by Health Services, and especially by those many members whose lives he touched in such a positive way.

Donations to the British Columbia Cancer Agency in Dr. Harry Stevens' name would be appreciated.

## RCMP Recruiting & the Polygraph

Cpl. John A. MacDonald, B.A. M.A. (RCMP Recruiting Unit, "E" Div.)

### Introduction

It may come as a revelation, but the RCMP does not use the polygraph in its pre-employment recruiting process. This is surprising given the scope and mandate of Canada's national police force and the fact most major police agencies in Canada utilize pre-employment polygraph screening. This article will consider the effectiveness of polygraph as a tool for detecting deception and examine the merits of screening police applicants through polygraph.

### What is a Polygraph?

There are plenty of arguments concerning the validity of polygraph and what it is designed to accomplish. Whether or not one agrees that it is, or is not, a scientific instrument, many features of a polygraph instrument collect information in a "scientific" fashion. The polygraph is a diagnostic instrument that records physiological changes in attached subjects. A standard blood-pressure cuff records changes in blood pressure and heart-rate; pneumograph tubes around the chest and stomach area record breathing; and electrodes attached to the fingers record galvanic skin response. A subject's physiological reactions are charted on moving graph paper or computer. The polygraph does not measure "lying", but records physiological

changes that occur when people answer questions under emotional stress. Theoretically, the stress induced in a polygraph examination comes from the fear of detection.<sup>1</sup>

There is little debate about *what* the polygraph measures, nor is there a great deal of discrepancy whether it *accurately* measures. There is, however, a lively discussion in the literature about the *methods* by which polygraph information is collected and whether these methods are *valid* and *reliable*. Professor Furedy states that the formulation of three types of questions is fundamental in attaining accurate and reliable results.<sup>2</sup> Furedy states that "it is imperative that the questions be constructed in such a way that they will not be biased in

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favour of a particular physiological response or prejudicial to the examinees state of mind."<sup>3</sup> It is important to phrase questions so that the intent of the inquiry is not in doubt or open-ended. This is particularly true when a polygraphist is conducting a criminal examination, which may be less important when conducting a *pre-employment* polygraph.

According to Desroche, the polygraph can be used as an effective investigative tool even though the results may not be admitted into evidence. Desroche identifies five areas where the polygraph may be helpful in a criminal investigation: (1) to eliminate suspects; (2) to determine whether or not a crime has been committed; (3) to identify culprits and obtain admissions of guilt; (4) to identify omissions or exaggerations (in a statement); and (5) to assist in gathering additional information about an offence.<sup>4</sup> It is obtaining admissions of guilt through confessions that has created controversy with the polygraph. According to Furedy and Liss, the polygraph is analogous to a "rubber hose" and the real purpose of a polygraph is "[t]he use of psychological pressure to extort a confession rather than a concern to get at the truth."<sup>5</sup> They argue that an environment of intimidation takes place long before the person ever takes the actual test. It is during the pre-interview stage, the setting up of the polygraph itself, and the ritual of the polygrapher which convinces the examinee that the instrument is infallible and the process is foolproof, which amounts to a psychological rubber hose. Desroche also lends support to the notion that the polygraph is a confession-inducing device:

Subjects are so often concerned with the instrument itself that they fail to realize the important role the examiner plays...they may make revealing statements that can be effectively used in interrogation. In addition, suspects confess more readily and witnesses and complainants are more likely to admit deception if evidence can be produced that indicates guilt or deception.<sup>6</sup>

Ash agrees with Furedy that the time spent with the examinee leading up to the test is often the most valuable in terms of acquiring evidence. The test itself is really anticlimactic. Ash states "reliance on pre-test procedures in the polygraph in order to obtain disclosures (i.e.) the threat of being found out during the technical phase, prompts examinees to disclose more completely in order to clear their conscience and therefore implicitly making the results more reliable."<sup>7</sup> Somehow, during the pursuit of the truth or confessions Furedy and Liss assert that the function of the polygrapher has become blurred and that its "detection of deception" capacity is lost. They make the point that "[u]sually the stated (both to the client and the court) police motive for using the polygraph is to resolve the question of criminal guilt, a position which stresses the detection of deception function of the polygraph."<sup>8</sup> They go on to posit that the two main functions of any polygraph, regardless of the sequence or method of administering the examination, are: (1) detection of deception, and (2) confession inducing potential.<sup>9</sup>

Furedy and Liss also claim that, because polygraph evidence is generally inadmissible in Canadian courts, it is the confession (and not the detection) inducing function of the polygraph that has become the primary issue instead of the accuracy of the polygraph as a scientific detection-of-deception device.<sup>10</sup> Polygraph examiners obtain results by exploiting not only a person's physiological responses but also by phrasing questions properly and by subtle psychological manipulation. Raising "moral guilt" (e.g. I am responsible for the money because I was in charge of it) and "criminal guilt" (e.g. I took the money) are formulations. The central aim of the polygraph examiner is to play on moral guilt to obtain the criminal guilt confession.<sup>11</sup>

### Is the Polygraph "Scientific"?

The argument over whether or not the polygraph is "scientific" in the traditional sense has been ongoing for many years. This can be attributed, in part, to the fact that this tool combines



several sub-sets of psychology (which are also being debated) and pure physiology. If the polygraph is not purely "scientific", it certainly has moved towards "science", particularly as twentieth century policing has shifted to the "professional model." The criteria for any test to be deemed scientific is rigorous and demanding. A hypothesis must be proven to exacting standards and it must consistently meet those standards. In the case of the polygraph, the debate has focussed on two main criteria for determining whether or not it is a true "scientific" instrument: *reliability* and *validity*.

*Reliability* refers to the extent to which a test *consistently* measures what is being measured. *Validity* refers to the extent to which the test *accurately* measures what is being measured.<sup>12</sup> Reliability is generally tested by having different polygraphers independently score charts. The degree of consistency between the scores is the measure of reliability. Validity is measured by comparing the results of the test (*i.e.* the decision of the examiner as to truthfulness/deception) and the real truth. Although it is relatively easy to test for reliability, there are a number of methodological problems in testing the validity of a polygraph.<sup>13</sup> This appears to be one of the polygraph's greatest weaknesses. As observed by Desroche and Thomas, "[i]n order to determine validity it is necessary to obtain a criterion measure against which to compare the test subjects [and since] [l]ab experiments create an artificial environment to establish criterion and the examiner has little at stake" the results are not reliable.<sup>14</sup>

Improvements have been made to the polygraph instrument over the years to increase the accuracy of the data, but this has done little to convince the skeptics. As Furedy points out, the "apparent scientific advances are all aspects that are only correlated with, but are not criteria for, the movement of a technique towards genuine scientific respectability."<sup>15</sup> Schiff points out that psychophysiology suggests that very different psychological processes like anger and fear cannot be differentiated simply by examining the patterns of physiological responses. However,

he concedes that "the psychophysiological evidence does not refute the basic premise of polygraphy that it is possible to obtain *quantitative* physiological differentiation between lying and truth-telling...[since] there is evidence that deceptive answers to crime related questions tend to produce quantitatively larger physiological responses than truthful answers."<sup>16</sup>

If accuracy is in question, how can the polygraph be justified in an investigation? Desroche concludes the absence of 100% accuracy does not mean that the validity is low, because "[t]here is good evidence to indicate that the CQT (common polygraph method) in the hands of a well trained examiner has a significantly better chance of validity."<sup>17</sup> Desroche also notes that validity is difficult to prove in police cases because the best criteria is finding out the truth, yet police cases can remain unsolved and the results unverified.<sup>18</sup>

Schiff examines the polygraph, but is generally non-committal on the matter. He mentions that the U.S. courts reject the results of the polygraph because of the lack of scientific evidence to support this method of determining the truth. However, U.S. courts have clouded the scientific dilemma further by also excluding evidence that a witness was willing to take a polygraph. Schiff mentions that the threshold of scientific reliability for other methods, such as "narcoanalysis" (*i.e.* truth serum), are no different in some respects.<sup>19</sup>

The majority of polygraph examinations in North America are given by private agencies for employee-screening purposes, whereas polygraph examinations given by police agencies are implemented in "real life" highly dramatic situations. It can be hypothesized then that the threat of serious consequences in criminal polygraph cases will arouse the subjects' anxiety and increase the validity of police polygraph examinations.<sup>20</sup> Desroche finds the only conclusion that can be made about the validity of the polygraph is that "we don't know since field studies of the police polygraph are difficult to arrange and therefore less frequent than laboratory research."<sup>21</sup>

Furedy and Liss are less optimistic in their view of the validity of the police polygraph, describing it as nothing more than a "complex and highly variable interview situation as opposed to a 'test' as it is commonly referred to", concluding that "[e]ven for the innocent, the crime-relevant questions obviously have greater emotional impact."<sup>22</sup> Nevertheless, the pervasive and successful use of the polygraph in policing suggests it can have effective application when properly applied.

## Canadian Jurisprudence

The admissibility of polygraph evidence in Canadian courts has been controversial. To date, the Supreme Court of Canada ("SCC") has ruled polygraph evidence is inadmissible, but not for the reasons one might expect. The two leading cases on polygraph evidence in Canada are *Phillion*<sup>23</sup> and *Beland*.<sup>24</sup> In these cases, the SCC relied on the "hearsay rule" to find polygraph evidence inadmissible and not the fact the instrument itself was "unscientific" or unreliable. In particular, the Court viewed polygraph evidence as "oath-helping"<sup>25</sup> and as such the third party rule applied.

In *Phillion*, not all of the justices agreed that the polygraph evidence should be excluded for lack of scientific reliability. Reliability is clearly not the pervasive concern for the SCC, notwithstanding the fact that Wilson J. seemed satisfied that the test has some scientific merit. Wilson J., in dissent in *Beland*, commented:

It is argued by the Crown that the polygraph should not be admitted because it is 'not reliable to an accepted standard'. This is not consistent with the view of the minority of this court in *Phillion* that there may be circumstances in which it would be appropriate to admit it.<sup>26</sup>

In *Beland*, McIntyre J. addressed the issues of reliability and validity regarding the polygraph and left the door ajar to reconsider polygraph evidence under different facts:

*continued on Page 4*

...it may be said that even the findings of a significant percentage of error in its results would not, by itself, be sufficient ground to exclude it as an instrument for use in the courts. *Error is inherent in human affairs, scientific or unscientific.*<sup>27</sup> (Emphasis added)

Furthermore, the *nature* of polygraph is not the central concern, since McIntyre J. cited trial practice and procedural concerns:

the polygraph will only cause delay and complication as we already have a well established mechanism for determining the veracity of an accused truthfulness and that is the trier of fact relying on the rules previously mentioned. *It is the fear of turmoil in the courts which leads me to reject the polygraph.*<sup>28</sup> (Emphasis added)

We can draw several inferences from SCC decisions regarding polygraph evidence. First, its scientific value may still be in doubt, but the matter may go to *weight* rather than admissibility. Second, polygraph evidence may, under the right circumstances, meet the "criminal test" for admissibility. Thus, it may also be of value when meeting the lower threshold of scientific reliability for pre-employment screening which is, generally, a much broader suitability examination. Third, as a tool to assist the police in screening police applicants, the polygraph cannot be ignored because there are persuasive reasons to believe that it can be useful in the hands of a properly trained examiner.

### Pre-employment Screening

Despite the concerns expressed above, the polygraph has proven to be an accepted and valuable tool to assist police agencies in criminal investigations. No criminal investigation, however, relies solely on polygraph evidence, since other methods are incorporated to build a case. Similarly, when used in conjunction with traditional methods of investigation, the polygraph can be a useful tool to assist police recruiters. Clearly, the objective for po-

lice agencies is to find recruits who meet high standards of integrity and honesty. The RCMP is no different in this respect, and, therefore, I argue that the polygraph is long overdue in becoming part of the RCMP recruitment process. In my view, the real challenge for recruiting personnel is to determine at what point a polygraph is the most *appropriate* and *suitable*.

Several British Columbia police agencies currently use the polygraph in their recruiting process and report that it is a valuable tool in assessing applicant suitability. Neophyte recruiters are not always convinced about the usefulness of the polygraph. For example, I interviewed one recruiter from a major Western Canadian police force who stated that when he first arrived on the unit he was doubtful of the polygraph, but after three months he completely changed his mind, observing that he could not hope to be as *thorough* without the polygraph.<sup>29</sup>

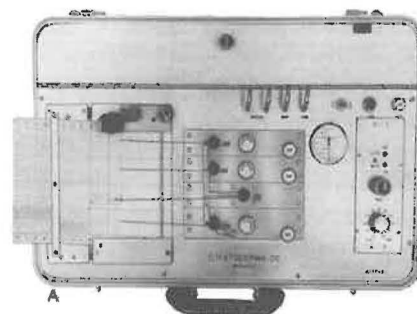
The polygraph affords the police recruiter the ability and option to utilize a proven and reliable way to test the veracity of what he/she has learned from, and about, an applicant. The thoroughness and confidence provided by a polygraph is the most important function performed by the pre-employment examination. The "pre-test" interview of the applicant will be, in all likelihood, the most important step for the conscientious police recruiter. This has certainly been the experience of agencies that currently use the polygraph. In fact, few, if any, subsequent issues of concern arise at the actual "test", since the *prospect* of the polygraph has kept the applicant honest and forthright throughout the application process.<sup>30</sup> In addition, it is important to keep in mind that the polygraph is being administered under voluntary conditions, and, therefore, it does not have to address or withstand *Charter* scrutiny for the admission of evidence in criminal proceedings.

From the national recruiting perspective of the RCMP, the polygraph clearly has application. While Ontario and New Brunswick have legislation<sup>31</sup> that prohibits pre-employment polygraph screening, this is not an insurmountable issue for the RCMP for two

reasons: (1) there are many examples in United States where police agencies with unique security concerns have been exempted from similar legislation; and (2) the RCMP as a federal agency may be immune from provincial legislation governing employment.

### Conclusion

It is clear that the RCMP has not adequately employed an important tool in the recruiting process that has been reliably, successfully and enthusiastically implemented by other police departments. As a tool for criminal investigators, including members of the RCMP, the polygraph has been an excellent resource. As a tool for the RCMP recruiter its time has also come. In fact, no persuasive argument or reason has been advanced against the implementation of the polygraph as a pre-employment tool to detect the dark side.



### Endnotes:

<sup>1</sup> Frederick Desroche and Alfred Thomas, "The Police Use of the Polygraph in Criminal Investigations" (1985), 27:1 *Canadian Journal of Criminology* 43.

<sup>2</sup> John Furedy features prominently in the polygraph debate and is a Professor of Psychology at the University of Toronto. He has focussed on the area of psychophysiology.

<sup>3</sup> John Furedy and John Liss, "Countering Confessions Induced by the Polygraph: Of Confessionals and Psychological Rubber Hoses" (1985-86), 29:4 *Criminal Law Quarterly* 91.

<sup>4</sup> *Supra*, note 1 at 50.

<sup>5</sup> *Supra*, note 3 at 112.

<sup>6</sup> *Supra*, note 1 at 49.



7. Phillip Ash, "A History of Honesty Testing" in John Jones (ed.) *Pre-employment Honesty Testing: Current Research and Future Trends* (New York: 1991) at 3.

8. *Supra*, note 3 at 98.

9. *Ibid.*

10. *Ibid.*, at 92.

11. *Ibid.*, at 112.

12. *Supra*, note 1 at 57.

13. *Ibid.*, at 57.

14. *Ibid.*, at 57-58.

15. John Furedy, "The North American CQT Polygraph and the Legal Profession: A Case of Canadian Credulity and a Cause For Cultural Concern" (1988-89), 38 *Criminal Law Quarterly* 431.

16. S.A. Schiff, *Evidence In the Litigation Process*, 3rd ed. (Toronto: Carswell Co. Ltd., 1988) at 628.

17. *Supra*, note 1 at 61.

18. *Ibid.*

19. *Supra*, note 16 at 645.

20. *Supra*, note 1 at 58.

21. *Ibid.*, at 61; see also, Avital Ginton, *et al.*, "A Method for Evaluating the Use of the Polygraph in a Real-Life Situation" (1982), 67:2 *Journal of Applied Psychology* 131 for an interesting experiment in Israel conducted on serving police officers to simulate polygraph conditions that were as realistic as possible. The experiment occurred without the knowledge of the people who were being tested. The outcome was generally inconclusive as the methodology was multi-layered and complex, however, it did suggest that polygraphers who base their results on observation and physiological responses, as opposed to one or the other in isolation, are more accurate in determining guilt.

22. *Supra*, note 3 at 94.

23. *Phillion v. The Queen* (1977), 74 D.L.R.

(3d) 136 (S.C.C.).

24. *R. v. Beland and Phillips* (1987), 36 C.C.C. (3d) 481 (S.C.C.).

25. *Supra*, note 16 at 633. Schiff states that the "Oath Helping" rule prohibits a party from presenting evidence which has, as its sole purpose, the bolstering of the credibility of that party's own witnesses. It is essentially perceived to be self-serving and therefore without credibility.

26. *Supra*, note 24 at 506.

27. *Ibid.*, at 494.

28. *Supra*, note 16 at 637.

29. Personal conversation on October 30, 1998.

30. Personal conversations and correspondence with various police department recruiting units which use the polygraph in the application process.

31. For example, see the *Employment Standards Act*, R.S.O. 1983.

## Management Issues in Policing: Promotion - Recognizing Prior Police Service

R.G. Kroeker, B.A., LL.B

### The Issue

In the previous ten years we have seen extraordinary advances in the type and use of technological tools in policing. For instance, in many police agencies patrol members have instant direct access to CPIC and other information retrieval systems from their police cars and the use of computer aided dispatch is becoming the "industry norm." Cellular telephones and video systems are now commonplace in many police cars. Unfortunately, advances in human resource management in policing have progressed at a slower pace than technological change. One such area in human resource management that has lagged behind is promotional policy and process, and specifically, the recognition of prior police service.

Presently, when a police officer moves from one police agency to another, the officer is essentially forced to start her or his career over. Rank, experience, skills, ability, knowledge and pay-scale are not formally recognized when moving from one agency to another. Further, if one moves from the RCMP to a municipal police agency, in addition to the loss of rank, recognition of experience and

pay-scale, the member also loses his or her pensionable time.<sup>1</sup> For these reasons, virtually all movement between police agencies in British Columbia is at the junior constable level.<sup>2</sup>

Every police agency in British Columbia stipulates that a member must serve a minimum amount of time within *that* agency before the member can become eligible for promotion.<sup>3</sup> The time period one must serve within an agency before he or she becomes eligible for promotion varies widely from three to eight years.<sup>4</sup> This time period, or eligibility criteria, applies irrespective of the police member's previous rank, job knowledge, skills, ability or education.

This lack of recognition of prior police service between police agencies leads to some anomalous results. For example, I am aware of a municipal police officer in British Columbia who had, at one point in his career: seventeen years total police service including ten years in a major Canadian metropolitan police agency, significant acting supervisory experience, a bachelors

degree in criminology, a masters degree in public administration, and, was a doctoral degree candidate in an area of study related to policing. Notwithstanding this police officer's considerable experience and expert status in the field of public administration, the police officer was not considered eligible for a first level supervisory position because the officer had not completed eight years of his police service with the police agency at which the officer was presently employed. Unfortunately, this is not an isolated case. Other examples exist.

### The Arguments

The reasons for requiring a police officer to spend a significant period of time within an agency at the entry level before being considered eligible for promotion have proven to be somewhat elusive. In fact, the rationale supporting eligibility criteria based on service within a specific agency are not often found written in policy, but rather, are a part of the workplace culture and usually

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only exist verbally. As far as can be determined anecdotally, the common themes supporting the service criteria within a specific department are: 1) loyalty; 2) a need to get to know a specific geographic policing area; 3) a need to become indoctrinated in the agency's culture; and 4) protection for senior members from being passed over for promotion. I propose to deal with each of these issues.

### *Loyalty*

All organizations hope to foster loyalty on the part of employees. The development of loyal employees is a component of any good management strategy. However, there are inherent difficulties in attempting to define or measure loyalty. By way of example, consider the following. Police officer A and police officer B are equally qualified and apply to a local police agency. Police officer A is hired as there is only one opening and she applied to the agency first. There are no further openings at the local agency for the foreseeable future, so B accepts an offer from another police agency. After five years the local agency has an opening and B moves to the local police agency. Who is more loyal? Is A more loyal than B because she has been at the agency longer? Is B more loyal to the local agency because she had a choice between police agencies and chose the local department? Moreover, who is to be the judge of loyalty and on what basis? There are no clear answers to these questions. While loyalty is important, it ought not to be used to keep people out, nor should it be used as a barrier to hold back dedicated and qualified members of an organization.

### *Geographic Knowledge*

At first blush, requiring police officers to have geographic knowledge of the area in which they police sounds like a reasonable suggestion. However, one must consider if it will take eight years, or even three, to gain sufficient knowledge of one's working area to be effective. Further, the

RCMP, a police organization recognized worldwide for its professionalism and effectiveness, routinely moves its personnel from one geographic region to another. Senior constables, corporals, sergeants, and staff sergeants in the RCMP are not stripped of rank and pay-scale and returned to the role of junior constable simply because they have been moved to a new location. Nor are they required to wait a set time period within a geographic area prior to becoming eligible for promotion. To the contrary, these members are expected to draw upon the knowledge and skills they have gained as experienced police officers to adapt to the new challenge quickly and effectively. Becoming familiar with one's area of responsibility is important in policing, but it is information easily learned on the job. It is arguable that three years, let alone eight, are required to become an effective police officer in terms of getting to know a community.

### *Agency Culture*

Here it is suggested that a police officer must work within a police agency a certain number of years to be indoctrinated or socialized as to how people interact and to learn how "things are done" within that organization. In short, most police officers want the chance to assess individuals new to the police agency for their ability to "get along" or "fit" into the dominant culture before the new person becomes eligible for promotion. This is a valid and important concern. It can have an impact on overall morale and the ability of a supervisor to supervise and lead. Nevertheless, this concern is more properly addressed through the hiring process and an appropriate probation period rather than by barring otherwise qualified members of an organization from promotional competitions.

### *Fear of Being Passed Over*

Some police officers feel that the eligibility requirement based on service in a specific agency is required to protect those who began their careers in the agency from being passed over for promotion in favour of members who

have more diverse police backgrounds. The primary concern seems to be that police officers in mid-size and smaller departments will not be able to effectively compete for promotion with a colleague who has prior experience with a larger police agency. There is no doubt that this is a legitimate concern and is honestly held by many. However, no evidence has been cited to support the notion that prior experience in a larger police agency will give a candidate an advantage in promotional competitions. But even if it could be shown that some advantage was gained through prior experience, could this legitimately be used to justify erecting barriers to prevent otherwise skilled and qualified members of a police department from simply *competing* in a promotion competition? After all, is it not the objective of a promotional processes to identify and select the most qualified candidate(s) for the job?

### *The Challenge*

In a recent study,<sup>5</sup> the B.C. Police Commission looked at the reasons experienced police personnel leave police agencies and policing careers. The Commission found that one of the top four reasons experienced police officers leave policing is frustration with promotional policies, and specifically, barriers to promotion<sup>6</sup>. Moreover, the Oppal Commission, in an exhaustive review of policing in British Columbia, concluded that "[t]he promotion method has fallen into disrepute...There is a perception that promotion is arbitrary, political and a perpetuation of the old boys' network."<sup>7</sup> While there have been some improvements in promotional policies in some police agencies, eligibility and other promotional policy criteria with no real connection or nexus to job skill requirements, such as lengthy police service within a *specific* police department, still permeate the promotional policies of most agencies within the province.

The proper management of human resources is one of the most important tasks faced by today's police



administrators. Police budgets are usually the largest single item in any municipality's annual expenditures. Moreover, human resources are the most costly component of all police budgets with eighty to ninety percent of virtually every police agency budget going to wages. As the B.C. Police Commission has pointed out, all areas of the public sector are faced with shrinking resources and therefore the greatest value for the dollar spent must be obtained.<sup>8</sup> Consequently, it is appropriate to concentrate efforts to increase value on that part of the agency in which the most money is spent - human resources.

Stephen Covey and other experts in the field of human resource management and organizational effectiveness,<sup>9</sup> espouse the need for leadership and policy and procedures that are effective and principle-based. This means that, generally, an organization's policies and procedures must be fair and demonstrably connected to the needs of the organization. More specifically, promotional policies must be rationally connected to the knowledge, skills and ability one requires to do the job. Further, promotional criteria should be transparent (having accountability) and focused on identifying the best overall candidate. Eligibility criteria should not be used to exclude otherwise qualified members of an organization from competing for promotion. Requiring police experience within a *specific* police agency, as opposed to simply requiring police experience, often results in qualified and dedicated individuals being left out of consideration for promotion. This is likely to result in promotional decisions that are less than optimal in terms of advancing professional and efficient human resource management within an organization.

To ensure that scarce resources are not wasted and to help encourage a healthy and effective organization, the challenge for the current generation of police managers is to further modernize human resource management within policing. This requires human resource policies and procedures that are principle-based, effective, efficient and

that will withstand external scrutiny.<sup>10</sup> Further, it is worth recalling that with police agencies, as is the case with all public sector organizations, the primary responsibility is to the taxpayer. In the case of police managers, it is they who are trusted to provide the best police service possible given the available resources.

## Endnotes:

<sup>1</sup>Time spent with the RCMP cannot be transferred to the Provincial pension plan for police. However, pension contributions to the RCMP plan are returned to the member if his or her pension has not vested.

<sup>2</sup>There is one exception to this general statement. Infrequently, it is possible for a senior police administrator to move from one police agency to another at the executive level, and most often into the position of Chief Constable. In these cases it would appear that prior service and ability are recognized.

<sup>3</sup>There are some rare exceptions to this rule. Some municipal agencies will consider and hire a candidate for Chief Constable who has no previous experience within the agency. At least two municipal agencies have also advertised senior manager positions outside of their departments. However, these situations are rare in terms of the overall number of supervisory and management positions within the province.

<sup>4</sup>The average amongst the B.C. Municipal Forces is 5 years. If Victoria, Saanich, Oak Bay and Esquimalt, the agencies with the highest seniority eligibility requirements (7 or 8 years) are excluded, the average drops to 4 years. The RCMP requires 7 years service before a member is eligible for promotion.

<sup>5</sup>British Columbia Police Commission, *Retention of British Columbia's Municipal Police Officers: An Examination of Reasons for Leaving, Summary Report* by Kim Polowek (Victoria, B.C.: B.C. Police Commission, 1996).

<sup>6</sup>*Ibid.*, at 2 and 8.

<sup>7</sup>British Columbia, *Report of the Commission of Inquiry on Policing in British Columbia* (Victoria: Queen's Printer, 1994) (Commissioner: Mr. Justice W.T. Oppal) vol. 1 at xix.

<sup>8</sup>*Supra*, note 5 at 1.

<sup>9</sup>See generally, Stephen Covey, *Principle Centered Leadership* (New York: Simon & Schuster, 1990), Shimon Dolan & Randall Schuler, *Human Resource Management, The Canadian Dynamic* (Scarborough: Nelson, 1994), and David Whetten & Kim Cameron, *Developing Management Skills* 3<sup>rd</sup> ed. (New York: HarperCollins College Publishers, 1995).

<sup>10</sup>Failure to meet this challenge could result in change being imposed from outside policing. Until now no police officer has formally challenged promotional eligibility criteria based on service with a specific agency. However, such policies may be contrary to the mobility rights guaranteed

under s. 6 of the *Charter of Rights and Freedoms*: see *Mia v. British Columbia (Medical Service Commission)* (1985), 61 B.C.L.R. 273 (S.C.) in this regard. Also, with amendments to the *Police Act* coming into force in July of this year, one may now make a service or policy complaint to the Police Complaints Commissioner where there is evidence to suggest that a policy or practice of a municipal police agency results in an inappropriate use of police resources.

## Operational Notes

### *R. v. Cook* (1 October 1998) Reg. No. 25852 (S.C.C.).

The accused was arrested in the United States by U.S. authorities pursuant to a warrant issued in connection with a Canadian extradition request following a murder committed in Canada. The accused was read his Miranda rights upon arrest and said he understood those rights. When taken before a United States Magistrate, the accused indicated that he wanted a lawyer appointed for him, but he did not see or contact a lawyer prior to his interrogation by the Canadian detectives. Canadian police who interviewed the accused did not ask the U.S. authorities if the accused had requested a lawyer and, indeed, informed the accused of his right to a lawyer in a confusing and defective manner subsequent to asking the accused a series of background questions. The accused gave a statement in which he denied having committed the murder. At trial, the Crown sought a ruling which would have permitted it to use this statement to impeach the accused's credibility. On a voir dire, the defence alleged that the statement was obtained in breach of s. 10(b) of the Canadian *Charter of Rights and Freedoms* and sought its exclusion under s. 24(2). The trial judge found that the statement was admissible, notwithstanding the *Charter* breach, for the limited purpose of impeaching the



accused's credibility in cross examination. The accused was convicted and his appeal to the Court of Appeal was dismissed. The issues on appeal included whether the *Charter* applies to the taking of the accused's statement by Canadian police in the United States in connection with their investigation of an offence committed in Canada for a criminal prosecution to take place in Canada. The Court held that *Charter* applied to the actions of the Canadian police in interviewing the accused in the United States and its application does not interfere with the sovereign authority of the U.S.

***R. v. M. (M.R.)* (26 November 1998)  
Reg. No. 26042 (S.C.C.)**

The Court found that a student's right to be free from unreasonable search and seizure under s. 8 of the *Charter* was not violated when a vice-principal searched the accused for drugs in the presence of a police officer. Warrants are not, therefore, required by school officials to conduct searches of students. The Court did note however, that school officials (1) must have reasonable grounds to believe that school regulations or discipline has been breached and a search will provide evidence of the breach; (2) they are in the best position to assess the information in a particular school and when it provides sufficient grounds; (3) reasonable grounds can be based on information from a student that is considered credible, personal observations, several sources of student information; (4) the nature of the information and credibility of the sources must be assessed in the context of a particular school; (5) the search itself must be reasonable and appropriate under the circumstances that exist and based on the nature of the breach; and (6) the intrusiveness or extent of the search will depend on the gravity of the suspected breach.

***R. v. Creswell* (No. 1) (21 January 1998) Van. Reg. CC970285 (B.C.S.C.)**

Accused charged with numerous offences under the then *Narcotic Control Act* in relation to financial transac-

tions at a currency exchange run by police in downtown Vancouver. The accused argued that the currency exchange was run illegally in that the police were knowingly possessing proceeds of crime and they did not comply with the laws regulating exchanges. The police argued they had no intent, there was no other investigative alternatives and that they did not have to comply with the law because they had Crown immunity. The Court found that the police had no immunity from prosecution when breaching the criminal law and their activity was illegal.

***R. v. Creswell* (No. 2) (1 April 1998)  
Van. Reg. CC970285 (B.C.S.C.)**

Accused charged with numerous offences in relation to financial transactions at an undercover currency exchange run by the RCMP. Accused sought disclosure of legal opinions provided to the investigators before and after the project was initiated. Crown argued the opinions were protected by solicitor-client privilege and not subject to disclosure. The Court found that solicitor-client privilege did exist between the police and its own legal advisors, however, it was waived in this case because the advice was relied upon to conduct the project. The Court did not find that the advice was sought to facilitate a crime thereby vitiating the privilege under the future crime exemption.

***R. v. Baker* Victoria Registry (B.C. Prov. Ct.)**

The Court upheld the constitutional validity of s. 810.2 of the *Criminal Code* which permits a judge to issue an (anticipatory) Peace Bond before an offence has been committed. Section 810.2 directs a judge to issue an anticipatory peace bond if there is information from a person that she or he has reasonable grounds to fear that the defendant will commit a serious personal injury offence. In this case an anticipatory peace bond was upheld against an individual who was arrested the same day he finished a seven year sentence for several sexual and firearms offences.

***R. v. Khatchadorian* (7 August 1998)  
Van. Reg. CA022367 (B.C.C.A.)**

West Vancouver P.D. and Squamish RCMP attended a noisy house party. While police were speaking to the person in charge of the residence, one officer noted the accused appeared to be attempting to interfere, questioned the authority of the police to be at the residence and then began dissuading persons around the house from leaving the party. At the request of the person in charge of the residence, the officer began to shut the party down, but the accused persisted in interfering and he was arrested for breach of the peace. Upon searching the accused the police found several flaps of cocaine. The accused argued he was unlawfully arrested, making the search improper and the evidence inadmissible. The Court found that police officers were engaged in activities to preserve the peace. The Court stated at p. 6 that "a police officer is entitled to make a lawful arrest of someone who is engaged in a breach of the peace or who is anticipated may shortly engage in such activity." Further, a reasonable search incidental to an arrest is lawful.

***R. v. Lal* (22 October 1998) Van. Reg. CA023104 (B.C.C.A.)**

Accused stopped by police while driving a car in an area under police protection. The accused provided his licence and insurance documents to police. Officers were informed that the occupants of the vehicle were considered to be armed and dangerous, as well as being linked to an individual believed to be involved in the murder of three people. Eventually the accused was asked to step out of his vehicle, and a search found a gun in his waist pack. The accused argued the police did not have grounds to arrest or search him, and the evidence was inadmissible. The Court found that the officer had *articulable cause* to stop and search the vehicle based on the sufficiently reliable information he had been provided and the circumstances surrounding the murder cases.