JUSTICE INSTITUTE of BRITISH COLUMBIA

IN SERVICE: 10-8

A PEER READ PUBLICATION

A newsletter devoted to operational police officers in Canada.

IN MEMORIAM

On August 10, 2018 45-year-old Fredericton Police Constable Lawrence Robert (Robb) Costello and 43-year-old Fredericton Police Constable Sara Mae Helen Burns were killed by gunfire as they responded to a shooting at an apartment building. Two other Fredericton residents, 42-year-old Donald Adam Robichaud and 32-year-old Bobbie Lee Wright, were also killed. A 48-year-old Fredericton man was charged with four counts of first degree murder in relation to this event. Constable Costello is survived by his spouse and four children. Constable Burns is survived by her spouse and three children.

“They are our heroes. We shall not forget them.”

inscription, Canadian Police And Peace Officer's Memorial

Highlights In This Issue

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Advanced Police Training at the Justice Institute of BC

Looking to refresh or develop your current skills? Our Advanced Training Program provides in-depth development opportunities for law enforcement officers. Some of our courses involve training in traditional and online investigations; patrol operations, as well as surveillance techniques and developing leadership skills. Sworn municipal officers, RCMP, peace officers, and other law enforcement officers (by approval) are encouraged to register.

Upcoming Courses for Fall 2018

- ☑ **Basic Tactical Surveillance Training** @ New West Campus: September 10 – 14
- ☑ **Basic Tactical Surveillance Training** @ Victoria Campus: September 24 – 28
- ☑ **Standard Field Sobriety Training** @ New West Campus: October 1 – 4 (B.C. officers only)
- ☑ **Intro to Tactical Surveillance** (2-Day Footing) @ New West Campus: October 10 - 11
- ☑ **Advanced Crisis Negotiator Training** @ New West Campus: October 22 – 26

Advanced Police Training Contact Information

advancedpolicetraining@jibc.ca

604-528-5761

To view other 2018 courses, go to http://bit.ly/plceadv

2019 Calendar will be published soon

JUSTICE INSTITUTE of BRITISH COLUMBIA | LIBRARY

WHAT'S NEW FOR POLICE IN THE LIBRARY

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

Beyond bullet points.
Cliff Atkinson.
New York: Pearson Education, Inc., 2018.
HF 5718.22 A87 2018

The book of mistakes: 9 secrets to creating a successful future.
Skip Prichard.
New York : Center Street, 2018.
BF 637 S4 P7485 2018

The Canadian Press stylebook: a guide for writers and editors.
James McCarten, editor.
Toronto: The Canadian Press, 2017.
PN 4783 C35 2017

CMA driver's guide: determining medical fitness to operate motor vehicles.
Ottawa: Joule, a CMA Company, 2017.
TL 152.35 D485 2017

Coaching and mentoring at work : developing effective practice.
Mary Connor & Julia Pokora.
London: Open University Press/McGraw-Hill Education, 2017.
HF 5385 C66 2017

Counter-terrorism for emergency responders.
Robert A. Burke.
Boca Raton: CRC Press, Taylor & Francis Group, 2018.
HV 6431 B866 2018

Crisis leadership: how to lead in times of crisis, threat and uncertainty.
by Tim Johnson.
London; New York: Bloomsbury Business, 2018.
HD 49 J655 2018

Develop your leadership skills.
John Adair.
London; Philadelphia: Kogan Page, 2016.
HD 57.7 A2746 2016

The essentials of leadership in government: understanding the basics.
Len Garis, Colette Squires, & Darryl Plecas.
Abbotsford: University of the Fraser Valley, 2018.
HD 57.7 G37 2018

Handbook of victims and victimology.
edited by Sandra Walklate.
London; New York: Routledge, Taylor & Francis Group, 2018.
HV 6250.25 H34 2018

High performance habits: how extraordinary people become that way.
Brendon Burchard.
Carlsbad: Hay House, Inc., 2017.
BF 637 S4 B867 2017

Influence without authority.
Allan R. Cohen, David L. Bradford.
Hoboken: John Wiley & Sons, Inc., 2017.
HD 58.9 C64 2017

Legal research: step by step.
Margaret Kerr, JoAnn Kurtz, Arlene Blatt.
Toronto: Emond Montgomery Publishing Ltd, 2018.
KE 250 K47 2018

Peace leadership: the quest for connectedness.
edited by Stan Amaladas & Sean Byrne.
London ; New York, NY : Routledge, 2018.
JZ 5538 P374 2018

Practical research: planning and design.
Paul Leedy & Jeanne Ormrod; with Laura Johnson.
New York: Pearson Education, Inc., 2019.
Q 180.55 M4 L43 2018

2018 British Columbia Law Enforcement Memorial

Sunday, September 30, 2018 at 1:00 pm
Ceremony at the BC Legislature in Victoria, BC

Law Enforcement participants to form up in the 700 block of Wharf Street at 12:00 pm.

For complete events information including annual Golf Tournament and Ride to Remember, visit our website at http://www.bclem.ca
or
For details specific to your agency, contact your Ceremonial Sergeant Major

BC LAW ENFORCEMENT MEMORIAL

Follow us on:

OFFENDER's SENTENCE DOUBLED FOR STABBING POLICE OFFICER

R. v. Mala, 2018 NUCA 2

Police received a report at 10:00 pm that the 19-year old accused was outside a house waving a gun and threatening to kill police officers. Two police officers attended the scene and observed a pellet gun lying on the ground. The accused was at the top of the stairs to the house yelling, "shoot me, shoot me." An officer pointed a carbine at him and told him to lie down. The accused continued to yell at the police officers to shoot him and then ran into the house. When police entered the house, the officer encountered the accused in the kitchen. By that time, the accused had grabbed a knife and said, "I'm going to fucking kill you", and stabbed the officer once in the left arm. The officer pushed back and attempted to fire his carbine, but it did not fire properly. The accused then stabbed the officer twice more in the arm. Another officer tasered the accused and took control of him. The injured officer was taken to a health centre while the accused, who was agitated, intoxicated and smelled strongly of alcohol, was arrested. At police cells, the accused was yelling that he would wipe out the cops.

Nunavat Court of Justice

The accused pled guilty to aggravated assault and possessing a weapon for a dangerous purpose. The accused sought a sentence of time served plus three years probation while the Crown sought a two-and-a-half to three year sentence. The judge considered the accused's background growing up, a recent brain injury he sustained, his family support and his current circumstances including:

- His age (19-years-old at the time of the offence);
- His lack of criminal record;
- He was not setting out to harm anyone other than himself;
- His guilty plea and acceptance of responsibility; and
- The incident was "suicide by cop" and the officer's injuries were minor and transitory.

The judge sentenced the accused to nine months in jail for the aggravated assault and three months in jail, to be served consecutively, for the weapon offence. He was also given two years' probation with the usual conditions and an additional counseling provision.

Nunavut Court of Appeal

The Crown argued the sentencing judge erred, in part, by imposing a sentence that was demonstrably unfit. In its view, the trial judge mischaracterized the incident as "suicide by cop" and treated the police officer's injuries as minor and transitory.

Justice Bielby, authoring the Appeal Court's decision, agreed with the Crown that the sentence

"An assault on a police officer is more serious and is to be treated more seriously than an assault on another type of victim as evidenced by Parliament's creation of a separate offence of aggravated assault on a peace officer, section 270.02 of the Criminal Code of Canada."

imposed was demonstrably unfit. ***"It was unreasonable and a marked departure from other sentences imposed in similar circumstances,"*** said the Court of Appeal. ***"An assault on a police officer is more serious and is to be treated more seriously than an assault on another type of victim as evidenced by Parliament's creation of a separate offence of aggravated assault on a peace officer, section 270.02 of the Criminal Code of Canada."***

The Court of Appeal continued:

> [S]ection 718.02 of the Criminal Code requires that the primary consideration in sentencing for a breach of section 270.02 must be deterrence and denunciation. Sentences imposed must reflect the police officer's vulnerability, society's dependence on the police, and the goal of avoiding the creation of a mentality towards the police that invites easy resort to violence. [para. 20]

The particular circumstances of policing in the north were also considered as officers in small, isolated communities are particularly vulnerable.

As well, the sentencing judge erred in concluding that ***"the evidence did not support the finding that the accused … set out to harm the police officers or anyone but himself."*** She also did not adequately address the serious nature of the police officer's injuries and the risk to the officer when he was stabbed.

As a result, the Court of Appeal substituted a sentence of 21 months on the aggravated assault offence and three months less a day consecutively on the weapon offence for a total of two years less a day minus credit for pretrial custody. All other terms of the original sentence, including his probation order, remained in effect. This sentence, although increased, was recognized as being on the lower end of the proper range of sentencing for the offence of aggravated assault on a police officer.

Complete case available at www.canlii.org

BY THE BOOK:

s. 270 - 270.03 Criminal Code of Canada

Assaulting a peace officer

s. 270 (1) Every one commits an offence who

(a) assaults a public officer or peace officer engaged in the execution of his duty or a person acting in aid of such an officer;

(b) assaults a person with intent to resist or prevent the lawful arrest or detention of himself or another person; or

(c) assaults a person

(i) who is engaged in the lawful execution of a process against lands or goods or in making a lawful distress or seizure, or

(ii) with intent to rescue anything taken under lawful process, distress or seizure.

Punishment

(2) Every one who commits an offence under subsection (1) is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or

(b) an offence punishable on summary conviction.

[...]

Aggravated assault of peace officer

s. 270.02 Everyone who, in committing an assault referred to in section 270, wounds, maims, disfigures or endangers the life of the complainant is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.

Sentences to be served consecutively

s. 270.03 A sentence imposed on a person for an offence under subsection 270(1) or 270.01(1) or section 270.02 committed against a law enforcement officer, as defined in subsection 445.01(4), shall be served consecutively to any other punishment imposed on the person for an offence arising out of the same event or series of events.

Canadian Police and Peace Officers' 41st Annual Memorial Service

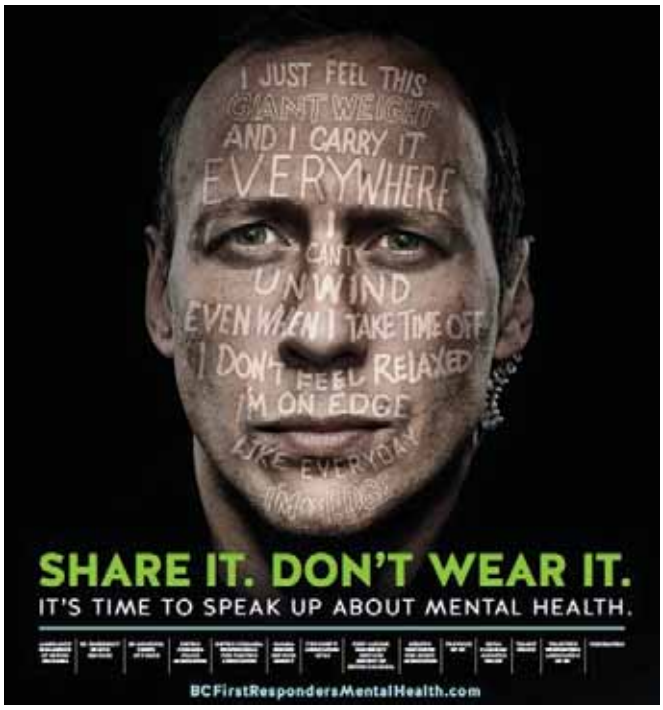
September 30, 2018
Parliament Hill
Ottawa, Ontario

Le 41e service commémoratif annuel des policiers et des agents de la paix canadiens

Le 30 septembre 2018
Colline du Parlement
Ottawa (Ontario)

THE MEMORIAL LA COMMÉMORATION™

MENTAL-HEALTH COMMITTEE BRINGS TOGETHER FIRST RESPONDERS TO LEAD AN ANTI-STIGMA CAMPAIGN & PROVIDE ACCESS TO HELP



by Doug Semple, Inspector, Stakeholder Relations and Community Policing, Metro Vancouver Transit Police, and Ralph Kaisers, Vice President, B.C. Police Association; both are members of the BC First Responders Mental-Health Committee.

If the above images seem familiar, you may already know about the "Share It. Don't Wear It" awareness campaign aimed at first responders in British Columbia. These particular images and words were chosen to represent the mental-health challenges law-enforcement officers and dispatchers face in their day-to-day work.

What you may not know is who's behind the campaign — which includes a website full of tools and resources for those who are looking for help and those who are looking to help — or how it came to be. This article will describe the process so that other jurisdictions who see a need for something similar can benefit from our experiences.

In December of 2015, the multi-agency B.C. First Responders Mental Health Committee was formed. Chaired by WorkSafeBC, its mission was quickly defined: to actively promote positive mental health and provide the leadership and recommended practices that first responders, their communities, and their leaders need.

In order to ensure a coordinated, cohesive approach, committee members were recruited from law enforcement, fire, ambulance services, and dispatch – representing workers and employers from paid, volunteer, rural, urban, and First Nations Emergency Services. Once formed, the committee identified its main goals, one of which was to develop and pilot an anti-stigma campaign incorporating champions from various first-responder groups.

The "Share It. Don't Wear It" campaign came out of a four-month research initiative, in which the committee surveyed first responders to better

understand their attitudes toward mental-health issues and the behaviours that encourage people to seek or offer help – or that deter them. Through in-depth interviews and an online discussion board, participants identified existing resources and those they felt were lacking. First responders from diverse backgrounds and levels of experience completed the study.

Equipped with those results, the committee held intensive focus groups to explore the forms stigma takes: what it looks like from leaders and colleagues, and how it can be personal, social, or structural in nature.

Posters, which can be downloaded from the site, were designed with a blank space at the bottom to highlight resources, meetings, events and workshops, so that the emphasis is on action. The aim is to associate the poster with a specific, time-limited event, after which it is taken down, so the image doesn't become background noise.

The quotes that appear over the faces of the officer and the dispatcher pictured above were collected during in-depth interviews with our colleagues: "I just feel this giant weight and I carry it everywhere. I can't unwind. Even when I take time off, I don't feel relaxed. I'm on edge. Like every day, I'm on edge"; "I feel worn down, overwhelmed. Sometimes it's hard to think clearly. I can't remember when I noticed the change – it just sort of became normal, I guess."

Respondents spoke powerfully about the need for a cultural change — a shift that must happen at the leadership level. They asked for a single source of information and resources to support colleagues and to seek information for themselves. A website was created for this purpose, but that is not its only purpose. We hope the site, which houses self-assessment and self-care tools, an event calendar, and resources for those in crisis, will spark larger conversations about mental health.

As committee members, we invite you to send us your thoughts and suggestions on how we can best meet the mental-health needs of law-enforcement officers in B.C.

Please note that the committee will be holding the first-ever BC First Responders' Mental Health Conference on Jan. 31 and Feb. 1, 2019. For more details please see the website at www.bcfirstrespondersmentalhealth.com.

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Doug Semple is the Inspector of Stakeholder Relations and Community Policing for the Metro Vancouver Transit Police. Email him at Doug.Semple@transitpolice.bc.ca.

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DETENTION ANCHORED IN SAFETY CONCERN NOT ARBITRARY

R. v. Rai, 2018 ONCA 623

The accused, a professional truck driver, was driving a commercial truck with a trailer attached along a highway. The box on the trailer could be raised and lowered using a Power Take-off (PTO) system. The accused had left the PTO lever in the "On" position and the box struck a bridge and a collision occurred. Three other motorists were injured and the bridge's overhead structure was damaged and partially collapsing.

Several police officers and other emergency personnel were dispatched to the chaotic scene. Police focused on moving non-essential people and vehicles away from the collision site. A police officer saw the accused sitting alone on the guardrail about 10 feet from hanging steel girders and he was also seen wandering around the crash site. At 4:24 pm, a police officer was directed to bring the accused "to a safe location for his safety." The officer escorted the accused to his police cruiser and placed him in it. He was not handcuffed, the air conditioning was running and the windows were rolled down to let in a breeze. The accused was permitted to use his cell phone, which he did many times, including calls to his dispatcher.

While he was in the police car, the accused asked the officer questions which the officer tried to answer. At 4:40 p.m. a detective arrived and spoke to the officer. The detective said he was not yet ready to interview the accused. At about 7:14 pm, the officer again left the cruiser to speak to the detective. When he returned to his police car, the officer detected a smell of alcohol on the accused's breath. He was then taken to a nearby police station where readings of 226mg% and 220mg% were obtained. The accused was arrested and charged with impaired driving, over 80mg%, dangerous driving and mischief endangering life.

Ontario Court of Justice

The Crown conceded that the taking of breath samples into an approved instrument breached s. 8 of the *Charter* because they were taken outside the three hour window as provided in the *Criminal Code*. The judge then excluded the breath test evidence.

The judge also found that the accused had been investigatively detained at 4:40 pm when the officer left the cruiser to speak to the detective. However, the judge found the detention was not arbitrary under s. 9 of the *Charter* during the approximately 2.5 hours he was confined to the police cruiser. And, even if he was arbitrarily detained, the judge would not have excluded the smell of the accused's breath under s. 24(2) of the *Charter*. But the judge did conclude that the police should have informed the accused of his s. 10(a) *Charter* right to be informed promptly of the reason for the detention and his s. 10(b) right to retain and instruct counsel. However, applying s. 24(2), he again declined to exclude the evidence relating to the alcohol breath odour.

The judge dismissed the impaired driving and over 80mg% charges and acquitted the accused of mischief endangering life. However, he found the accused guilty of dangerous driving, evidence of which included his consumption of alcohol. The accused was sentenced to one year in custody.

Ontario Court of Appeal

The accused argued, among other things, that the trial judge erred in concluding that his 2.5 hours confinement in the police cruiser was not an arbitrary detention. In his view, his ss. 9 and 10 *Charter* rights were violated and the odour of alcohol on his breath out to have been excluded as evidence.

The Court of Appeal rejected the accused's submission. ***"The principal, and continuing, purpose of the [accused's] detention was his own***

"The principal, and continuing, purpose of the [accused's] detention was his own safety,"

"In summary, in the context of a complex and dangerous accident scene and the police treatment on site of the [accused] anchored in a concern for his safety, the detention of the [accused] was lawful; it was the antithesis of an 'arbitrary' detention..."

safety," said the Appeal Court. ***"His truck had caused a terrible accident with extensive damage to vehicles and a bridge and injuries to several people. The police noticed the [accused] walking around a dangerous accident scene and sitting on a guardrail very close to a damaged and collapsing girder. Importantly, his truck was crushed."*** The Court continued:

> Unlike other motorists who were confined to their vehicles for up to three hours while police and emergency personnel dealt with the carnage caused by the accident, the [accused] could not return to his destroyed truck. In these circumstances, it made perfect sense for the police to do what they did – place the [accused] in a police cruiser and try to make him comfortable. The [accused] was concerned about his truck and gave no indication of a desire to leave. He asked questions of [the officer] about the accident that caused [the officer] to leave the cruiser to obtain information that he conveyed to the [accused]. The [accused] also spoke several times to his dispatcher. He also had [the officer] speak to the dispatcher. ….
>
> In summary, in the context of a complex and dangerous accident scene and the police treatment on site of the [accused] anchored in a concern for his safety, the detention of the [accused] was lawful; it was the antithesis of an 'arbitrary' detention and, therefore, did not infringe s. 9 of the Charter. [para. 20-21]

As for not excluding the smell of alcohol on the accused's breath based on the s. 10(a) and (b) breaches, the Court of Appeal upheld the trial judge's s. 24(2) ruling. First, the trial judge found the police made an understandable mistake. Failing to inform the accused of his s. 10 rights was not severe nor was it deliberate. The officers acted in good faith. Second, the police would have smelled the odour of alcohol regardless of the accused's detention. He would have remained at the scene with the many other motorists and eventually come into contact with police.

The accused's appeal was dismissed and his conviction was upheld.

Complete case available at www.ontariocourts.on.ca

GENERAL WARRANT OK EVEN IF CONVENTIONAL WARRANT COULD HAVE BEEN OBTAINED

R. v. Jodoin, 2018 ONCA 638

The police had information from several sources that the accused was dealing cocaine. They corroborated this information with surveillance showing frequent vehicle stops of short duration. They also believed that the accused was using a vacant commercial premise as a stash house. Although there was a sign on the premises, it did not appear to be an active business. There was no merchandise in the store and the telephone number for the business was not in service. The accused attended at the premises sporadically for short periods of time, and used a key to get in. An informant told police that the accused's partner in the drug business lived in a residential premises above this commercial unit. The accused lived elsewhere.

The police applied first for a general warrant under s. 487.01 of the *Criminal Code* for a "sneak and peek" to confirm drugs were being stored at the stash house. They entered the commercial unit in the early morning hours and found a locked wooden box within an interior room. There was a safe inside the wooden box. The police found what they believed to be crystal methamphetamine, cocaine and marihuana in the wooden box and in the safe. They then obtained a general warrant giving them a seven (7) day window in which to execute it, conditional upon the accused's presence at the unit. Since the accused's attendance at the

unit was so sporadic and unpredictable, the police wanted to execute the warrant just after the accused left the commercial unit. They were also concerned that the accused's partner, who lived above the unit, or others might destroy the evidence if they saw the accused being arrested. The police also obtained a general warrant to search the accused's vehicle and home, wanting to simultaneously execute searches at all three locations. A *Controlled Drugs and Substances Act* (*CDSA*) warrant was ruled out as the police reasoned that it would not provide the time and flexibility a general warrant would provide.

The Information to Obtain (ITO) explained that the accused was actively engaged in drug trafficking and that the execution of a general warrant would afford evidence of that activity. These grounds included the observations made of drugs in the commercial unit upon the execution of the "sneak and peek" warrant and the observations of the accused's frequent, but brief and sporadic, entries into the locked vacant commercial premises as well as the results of continued surveillance. The ITO also set out the affiant's reasons for believing that it was in the best interests of the administration of justice for the warrant to be issued, and his grounds for believing that no other statutory provisions permitted the proposed investigative procedure. The affiant stated, "[t]his application requires that techniques be used to gather evidence as opposed to simple search and seizure". The warrant was signed and, when he arrived and then left the premises, the accused was arrested a short distance away. Significant amounts of crystal methamphetamine, cocaine, marihuana and other drug related materials were seized from the commercial unit, the accused's vehicle and his home.

Ontario Superior Court of Justice

The judge found that the general warrant was properly issued under s. 487.01(1). It allowed the police to defer the execution of the warrant until the condition of the accused's attendance at the commercial unit was fulfilled. The judge held that this prospective search was not available under a conventional search warrant. The accused's *Charter* challenge to the validity of the warrant was dismissed and he was convicted of possessing drugs for the purpose of trafficking.

BY THE BOOK:

s. 11 Controlled Drugs & Substances Act

s. 11(1) A justice who, on ex parte application, is satisfied by information on oath that there are reasonable grounds to believe that

(a) a controlled substance…in respect of which this Act has been contravened,

…

is in a place may, at any time, issue a warrant authorizing a peace officer, at any time, to search the place for any such controlled substance…and to seize it.

s. 487.01(1) Criminal Code

s. 487.01 (1) A provincial court judge, a judge of a superior court of criminal jurisdiction or a judge as defined in section 552 may issue a warrant in writing authorizing a peace officer to, subject to this section, use any device or investigative technique or procedure or do any thing described in the warrant that would, if not authorized, constitute an unreasonable search or seizure in respect of a person or a person's property if

(a) the judge is satisfied by information on oath in writing that there are reasonable grounds to believe that an offence against this or any other Act of Parliament has been or will be committed and that information concerning the offence will be obtained through the use of the technique, procedure or device or the doing of the thing;

(b) the judge is satisfied that it is in the best interests of the administration of justice to issue the warrant; and

(c) there is no other provision in this or any other Act of Parliament that would provide for a warrant, authorization or order permitting the technique, procedure or device to be used or the thing to be done.

Ontario Court of Appeal

The accused argued that the trial judge erred in dismissing his *Charter* application to exclude the evidence found as a result of the general warrants. He contended that the investigative technique employed using the final general warrant could have equally been authorized under the *CDSA* and, therefore, the general warrant was not available to the police.

General Warrant

Under s. 487.01(1)(c) a general warrant is not available where there is another statutory provision that "would provide for a warrant, authorization or order permitting the technique, procedure or device to be used or the thing to be done." The Ontario Court of Appeal found a warrant under s. 11 of the *CDSA* could have been obtained in this case. As the Court of Appeal noted, ***"s. 11 of the CDSA provides that where there are reasonable grounds to believe there has been a contravention of the law relating to controlled substances, and that a controlled substance is in a place, a warrant may issue to search that place and seize the substance."*** Here, the police had reasonable grounds to believe that prohibited drugs were likely to be found in the premises.

However, simply using a *CDSA* warrant might not have linked the drugs to the accused. Because the search was to be executed in the future upon the occurrence of a specified contingency (the accused's presence at the unit), a conventional search warrant was not available. A general warrant, on the other hand, was available. Although, ***"a general warrant is to be 'used sparingly as a warrant of limited resort' so that it does not become an 'easy back door for other techniques that have more demanding pre-authorization requirements',"*** the Court of Appeal noted that the use of a general warrant is not precluded solely because a conventional search warrant could have been obtained. A general warrant, however, is a more demanding legislative authorization with stricter requirements such that it can only be issued by a judge (not a justice of the peace) and it must be established that it is in the best interests of the administration of justice to issue it. In holding there was an ample basis for the issuing judge to conclude the statutory elements of a general warrant were satisfied, the Court of Appeal stated:

> There is no statutory time limit for the execution of conventional search warrants, although it appears that the affiant here may have believed otherwise. When investigating drug related offences, the existence of reasonable grounds to believe that drugs are present immediately does not necessarily mean they will be present days later. Sometimes, a larger window for execution of a search warrant will be appropriate.
>
> We agree that prospective execution of a search, based on a future contingency, together with the simultaneous execution of related searches are not contemplated by a conventional search warrant. The general warrant was properly issued in this case, where the investigative technique proposed was not simply to seize the drugs but to link them to the accused and where there is no issue of evasion of a more stringent statutory regime. [para. 18-19]

The accused's appeal was dismissed.

Complete case available at www.ontariocourts.on.ca

s. 24(2) ANALYSIS ENTITLED TO DEFERENCE: LAWYER's CHILD PORN CONVICTION UPHELD

R. v. Schulz, 2018 ONCA 598

After obtaining subscriber details associated with a particular IP address from Bell Canada, the police obtained a warrant to search the accused's residence for electronic devices and documents that might contain evidence of child pornography offences. Because the accused was a lawyer, the warrant contained special provisions to protect solicitor-client privilege. These provisions included the appointment of a referee to ensure that the search

and review of seized documents was conducted in ways that would protect solicitor-client privilege. The warrant also required the police to place all seized items, unread, in a package and seal the package until further order of the court.

The search warrant was executed and the Crown subsequently obtained an order specifying the method by which a designated examiner could copy and review the contents of the seized devices for offensive materials. Before filing his report with the court and making copies of the seized devices available, the order required the examiner to ensure no privileged information was released to the Crown or police.

Ontario Superior Court of Justice

The accused challenged the validity of the seizure, detention, and examination of the seized devices on numerous grounds. He applied to exclude all evidence obtained from the seized devices on the basis that the search had been conducted in a manner that infringed his rights under s. 8 of the *Charter*. The judge went on to find several s. 8 *Charter* breaches:

- The police failed to file a report pursuant to s. 489.1(1)(b)(ii) of the *Criminal Code* for one month and to apply under s. 490(2) for an extension of time beyond 90 days to detain the seized items.
- The police failed to seal six seized devices, as required by the search warrant. This rendered their subsequent search unauthorized by the warrant.
- The police failed to return seized devices that did not contain offensive materials as required by the examination order.
- A police officer failed to take notes of his search of the unsealed seized devices.

The judge considered the s. 8 breaches on both an individual basis and cumulatively. He excluded from evidence only the six unsealed items for which no extension to detain was obtained under s. 490(2) as well as the devices on which no offensive materials were found. The other evidence was admitted. The judge concluded that none of the breaches resulted from bad faith conduct, save for the failure to return devices on which no offensive material was found. And, although the accused had a high expectation of privacy in respect of all of the seized items, there was a strong societal interest in the adjudication of the case on its merits. The accused was convicted of possessing child pornography. He was sentenced to 45-days imprisonment, to be served intermittently, three years' probation, and a 10-year prohibition order under s. 161(1)(d).

BY THE BOOK:

s. 8 Charter

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

s.24(2) Charter

Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of

Ontario Court of Appeal

The accused submitted, among other things, that the trial judge erred in her s. 24(2) *Charter* analysis by failing to properly assess the seriousness of the s. 8 infringements. In his view, the overall misconduct of the police was more serious than the trial judge found.

s. 24(2) *Charter*

A considerable amount of deference will be given to a trial judge's three-pronged s. 24(2) analysis provided the relevant factors have been considered. If a trial judge overlooks or disregards the relevant factors, a fresh s. 24(2) analysis is necessary and appropriate.

In this case, the trial judge considered and applied the proper factors. She conducted an assessment of each individual s. 8 breach and then assessed the breaches collectively. Justice Brown, speaking for the Court of Appeal, stated:

> [T]he trial judge was alive to the fact that some of the seized devices contained materials over which solicitor-client privilege was asserted. She noted that: (i) the failure to seal six items involved devices over which no privilege was claimed; (ii) the failure to take notes involved those same devices; and (iii) no search of the seized items occurred during the period prior to the filing of the s. 489.1(1) report or before the Examination Order was made. There is no suggestion in the record that the police seizure of the devices or the subsequent review and report by the Examiner resulted in the disclosure of any privileged information to the police or the Crown. As well, the [accused] acknowledges that the Crown did not seek to adduce any privileged information. [para. 26]

None of the trial judge's s. 24(2) findings were unreasonable and they were supported by the evidence. There was no basis for interfering with the admission of the evidence and the accused's appeal from conviction was dismissed.

Complete case available at www.ontariocourts.on.ca

INTERNATIONAL DAY FOR THE ELIMINATION OF VIOLENCE AGAINST WOMEN

November 25

STOP RELATED TO HIGHWAY SAFETY: ARTICULABLE CAUSE NOT REQUIRED

R. v. Gardner, 2018 ONCA 584

At about 11:25 pm a police officer received a call that a specific individual was suspected to be impaired and driving a green pickup truck in a First Nation community. Approximately 20 minutes later the officer arrived in the community and checked the residence of the individual, but he was not home. The officer left the residence and began to drive along a road. He saw headlights approaching on what appeared to be a pickup truck. It was dark out, and the road had no street lighting. The officer activated his emergency lights, stopped his cruiser, stepped out onto the roadway and flagged the vehicle to stop. It was a red pickup truck, not green one.

The officer approached the driver's side of the truck and asked the accused to roll down his window and identify himself. The officer told the accused that he was looking for an impaired driver. The officer smelled the odour of alcohol emanating from the vehicle. When asked if he had been drinking, the accused responded that he had. The accused was asked to step out of the vehicle because there were other occupants and the officer wanted to isolate the source of the alcohol smell. Once outside the vehicle, the officer could smell alcohol on the accused's breath. The officer made a demand for a roadside breath sample from the accused. The accused registered a "fail" and he was arrested for driving over 80mg%. He was advised of his rights to counsel, cautioned about his right to silence and read the breath demand. The accused was transported to the police station, declined counsel and two breath samples were taken resulting in readings of 110 mg% and 107 mg%. The accused was charged with driving over 80mg%.

"Police officers have the right to stop a vehicle for the purpose of checking on the sobriety of the driver. This is a power that the police have both at common law and through statutes such as the Highway Traffic Act."

Ontario Court of Justice

The accused alleged his rights under ss. 8, 9, 10(a), and 10(b) of the *Charter* had been violated. In his view, the police had no right to stop his truck because the police were engaged in a criminal investigation relating to a specific individual. Since he was not that individual, the police could not rely on their *Highway Traffic Act* (*HTA*) authority to stop him. This stop triggered an investigative detention and he ought to have been given his rights to counsel from the moment of its inception. He also contended that his s. 8 rights were breached because the officer did not have reasonable and probable grounds to make the breath demand. As well, he argued the officer failed to promptly inform him of the proper reason for his detention under s. 10(a).

The judge agreed with the accused. The judge concluded that the accused was detained for a purpose under the *Criminal Code*, and not pursuant to the *HTA*. Thus, the accused was arbitrarily detained. She also found that he should have been informed of his rights to counsel immediately upon his detention. Moreover, the officer violated the accused's s. 8 *Charter* rights because he did not have grounds to stop the accused's vehicle. The judge also found a s. 10(a) breach but did not provide reasons underlying her conclusion. The breathalyzer and contemporaneous statements were excluded as evidence under s. 24(2) and the accused was acquitted on the over 80mg% charge.

Ontario Superior Court of Justice

The Crown appealed the trial judge's ruling asserting that she erred by finding that the police were not permitted to detain the accused either under the *HTA* or at common law, and in finding that there had been a breach of his rights under s. 10(a) of the *Charter*. The appeal judge, however, upheld the trial judge's finding that this was an investigative detention and the police power to stop a vehicle under the *HTA* did not apply in this case. The findings of the trial judge could have been reasonably reached and her decision was not clearly wrong in law. The accused's acquittal was upheld.

Ontario Court of Appeal

The Crown again appealed arguing, in part, that the appeal judge erred by failing to find that the trial judge mischaracterized the nature of the stop. In teh Crown's opinion, the trial judge erroneously ruled that the officer was engaged in a criminal investigation and therefore could not rely on the *HTA* to stop the accused's vehicle to check on the sobriety of its driver.

Here, Justice Nordheimer, writing the Court of Appeal decision, found ***"the trial judge erred in law in finding that the actions of [the officer] constituted only an investigative detention that did not include a traffic stop for highway safety purposes under the Highway Traffic Act."*** He stated:

> The purpose for which [the officer] stopped the [accused's] vehicle was to determine if the driver of the vehicle was impaired. The fact that [the officer] stopped a vehicle, that was not the same vehicle for which he had a report of possible impaired driving, does not change the reason for the stop. The fact that [the officer] fortuitously discovered another impaired driver is irrelevant to the legal analysis. [The officer] had reason to believe that a person was operating a pickup truck while impaired. This informed [the officer's] decision to stop the [accused's] pickup truck to determine if the driver of the pickup truck was impaired. He had the authority to do so under s. 48(1) of the Highway Traffic Act. [para. 19]

"The actions of the police in stopping a vehicle under their authority at common law or by statute only constitutes an unconstitutional stop if the reason for the stop is unconnected to a highway safety purpose."

Since the stopping of the accused's vehicle was lawful, there was no arbitrary detention:

> Police officers have the right to stop a vehicle for the purpose of checking on the sobriety of the driver. This is a power that the police have both at common law and through statutes such as the Highway Traffic Act.
>
> The actions of the police in stopping a vehicle under their authority at common law or by statute only constitutes an unconstitutional stop if the reason for the stop is unconnected to a highway safety purpose. …
>
> If the police stop a motorist for a criminal investigation unrelated to highway safety, then they must have an articulable cause for the stop. … [references omitted, paras. 21-23]

Unlike cases where the police stop a motorist to investigate criminal activity unrelated to highway safety (such as drug activity or theft), the reason underlying the stop in this case was highway safety. Had the trial judge properly characterized the stop, she would have concluded that it was not an investigative detention that would invoke s. 9 of the *Charter* and therefore there was no breach of the accused's rights under ss. 10(a) or 10(b). Justice Nordheimer stated:

> What I see as apparent from the record is that almost immediately upon stopping the [accused's] vehicle, [the officer] advised the [accused] that he was looking for an impaired driver. He then proceeded to ask questions of the [accused] that were directly related to that purpose. There cannot have been any doubt in the [accused's] mind as to why his vehicle was stopped. Consequently, there is no basis for a finding that either the temporal or informational elements of the [accused's] s. 10(a) rights were breached.
>
> There was a delay in advising the [accused] of his rights to counsel under s. 10(b), but that delay was in order to determine whether there was a reasonable grounds to believe that the [accused] was impaired, such as to warrant a roadside breath demand through an Approved Screening Device. The Supreme Court of Canada confirmed … that giving rights to counsel can be delayed during the time required to implement a roadside breath demand. In this case, once the [accused] failed the roadside test, he was immediately advised of his rights to counsel. The [appeal judge] erred in upholding the trial judge's conclusion that the [accused's] s. 10(b) rights had been violated again, apparently, on the basis that is was a finding of fact entitled to deference. It was not.
>
> Finally, the trial judge's finding that there was a breach of the [accused's] s. 8 Charter rights to be free from unreasonable search and seizure flowed from her erroneous conclusion that there had been a breach of the [accused's] s. 9 rights resulting from an arbitrary detention. I have already said that there was no arbitrary detention. Both the roadside demand and the subsequent breathalyser test are expressly authorized by the Criminal Code and were properly implemented in this case. Once [the officer] smelled alcohol on the [accused's] breath, he was entitled to administer a roadside test. When the [accused] failed that roadside test, [the officer] was entitled to arrest the [accused] and conduct a breathalyser test … . Neither of these tests involved any breach of the [accused's] s. 8 Charter rights. [references omitted, paras. 26-28]

Since the trial judge erred in finding *Charter* breaches, she erred in excluding the breathalyzer evidence and the accused's statements. The Crown's appeal was allowed and a conviction was entered. The breathalyzer results and the accused's statements made at the time of the police stop were sufficient evidence to convict the accused of driving over 80mg%. The matter was remitted back to the Ontario Court of Justice for sentencing.

Complete case available at www.ontariocourts.on.ca

INVENTORY SEARCH AUTHORIZED BY LAW: NO CHARTER BREACH

R. v. Russell, 2018 BCCA 330

A police officer pulled over a vehicle at about midnight after observing its taillights were not illuminated, an offence under BC's *Motor Vehicle Act Regulations*. When the vehicle's licence plate was queried on the police computer, the officer learned that its registered owner (the accused) was on an undertaking and was not allowed to be within the city limits. The accused was the only occupant of the vehicle. He was arrested for breaching his undertaking and asked to step out of the vehicle. At this time, the officer saw, in plain view, a wallet on the passenger side floor of the vehicle and a laptop bag on the passenger seat. The accused was arrested, searched incidental to the arrest and placed in the rear of the police vehicle.

Because the accused had stopped his vehicle in a manner that left it straddling the white "fog line", the officer opined it could impede traffic on the highway. The officer decided to tow the vehicle under s. 188 of BC's *Motor Vehicle Act* (*MVA*) and remove it to a compound. When the tow truck arrived, the officer gave the vehicle keys to the tow operator and removed the wallet and laptop bag from the vehicle for safekeeping until they could be returned to the accused upon his release. The officer then asked the accused if there was anything else he wanted from the vehicle. The accused said there was not and that he wanted the items retrieved by the officer left in the vehicle. The officer did not put the wallet or laptop bag back, instead he took them to the police station where he conducted an inventory search of them. In the laptop bag drugs were discovered and the accused was charged with several drug offences.

British Columbia Provincial Court

The judge found that the officer was authorized under s. 188 of the *MVA* to tow the vehicle to a secure location since it was parked in a manner that could impede the flow of traffic and the accused was not able to move it. As for the inventory search, the judge concluded that the authority to tow a vehicle created the responsibility to secure its contents, which may require conducting an inventory search of those contents. In his view, the rationale for the officer's authority to conduct an inventory search of the vehicle also justified the officer conducting an inventory search of the contents removed from the vehicle, including those in the laptop bag.

Moreover, the judge found the search was conducted in a reasonable manner. The failure not to allow the accused to make other arrangements to move the vehicle was not unreasonable. It was late at night, the accused was its only occupant, the vehicle was parked in an unsafe location and it would have been imprudent for the officer to wait at the side of the highway for the accused to make calls in order to find someone to pick up his car. Furthermore, the accused had not asked the officer to allow him to make other arrangements for the vehicle. The judge also rejected the accused's contention that the officer's true purpose in towing the vehicle was to search its contents. Rather, the judge accepted the officer's evidence that the sole purpose of his search was to secure and safeguard

BY THE BOOK:

s. 188 BC's Motor Vehicle Act

If a vehicle is standing or parked …

(d) in a position that causes it to interfere with the normal flow of traffic on the highway, …

a peace officer may …

(f) move the vehicle, or require the driver or person in charge of the vehicle to move it, to a position determined by the peace officer, or

(g) move the vehicle or take the vehicle into his or her custody and cause it to be taken to and stored in a safe and otherwise suitable place.

"Where a vehicle is lawfully taken into police custody (in this case, pursuant to statutory authority) the police have the authority, if not the duty, to conduct an inventory search of its contents."

the contents of the laptop bag that was in plain view. And, even if the officer had a dual purpose in towing the car, it would not necessarily have been improper for the search as long as the officer did not go beyond the proper scope of an inventory. Finally, there was no duty imposed on the officer to return the items to the vehicle after the accused asked him to do so. The officer could not be expected to know or ascertain whether the accused's instructions would absolve the officer of legal responsibility for the items.

The judge concluded that the inventory search, including the warrantless search of the computer bag, was authorized by law. It was conducted pursuant to statutory authority for the non-investigative purpose of securing and safeguarding the vehicle and its contents while they were in police custody. There was no s. 8 *Charter* breach and the drugs found in the laptop bag were admitted into evidence. The accused was convicted of possessing cocaine and methamphetamine for the purpose of trafficking and simple possession of heroin, GHB, and ketamine.

British Columbia Court of Appeal

To justify a warrantless search, the Crown must establish that the search was authorized by law; the law was reasonable; and the search was carried out in a reasonable manner. Here, the accused contended that the warrantless search was not authorized by law. Thus, his s. 8 *Charter* right was breached and the evidence obtained from the unlawful search should have been excluded at trial under s. 24(2).

Justice Smith, however, speaking for the Court of Appeal found the inventory search to be lawful, noting the jurisprudence in this area was settled. ***"Where a vehicle is lawfully taken into police custody (in this case, pursuant to statutory authority) the police have the authority, if not the duty, to conduct an inventory search of its contents,"*** she said. Section 188, like the impound provisions under Part 9 of the MVA, authorizes ***"the police to take possession of the vehicle for traffic safety reasons, store the vehicle in a suitable place, and ensure the security of its contents by conducting an inventory search."*** Just because s. 188 does not use the term "impound", it allows the vehicle to be taken into legal custody and therefore ***"the police are authorized to conduct a reasonable inventory search of the contents of the vehicle."***

As for the validity of the inventory search, Justice Smith stated:

> The arresting officer in this case testified at least three times that he had taken custody of the vehicle pursuant to s. 188 of the MVA, and that his purpose in retrieving the wallet and laptop bag from the vehicle had been to secure and safeguard its contents until the vehicle could be returned to [the accused]. The judge accepted his evidence. The inventory search was therefore authorized by law. That the officer also acted in accordance with RCMP policy (as opposed to express statutory authorization to search) does not negate or undermine the validity of the search of the items lawfully seized from the vehicle pursuant to s. 188 of the MVA. [para. 33]

The search was neither a matter of "routine practice" by an officer just because they had a vehicle towed nor was it done solely on the basis of police administrative procedures, examples of circumstances where inventory searches have been found not be lawful. Nothing the officer did in this case took the search outside any statutory or common law authority.

The accused's appeal was dismissed.

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

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For more resources on better understanding mental health in the context of the experiences and pressures of first responders, as well as the broader population, visit the following link.

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FACTS - FIGURES - FOOTNOTES

10,485 The number of prohibited weapons seized by the Canada Border Services Agency for fiscal year 2017/18. A fiscal year begins on April 1 and ends March 31. Prohibited weapons include such items as switchblade knives, tear gas, mace, nunchaku sticks, throwing stars, bladed finger rings, belt buckle knives, fighting chains, push daggers, spiked wristbands, steel cobra batons, morning stars and brass knuckles. In addition, the CBSA seized 751 firearms during the same period, including non-restricted, restricted and prohibited firearms,.

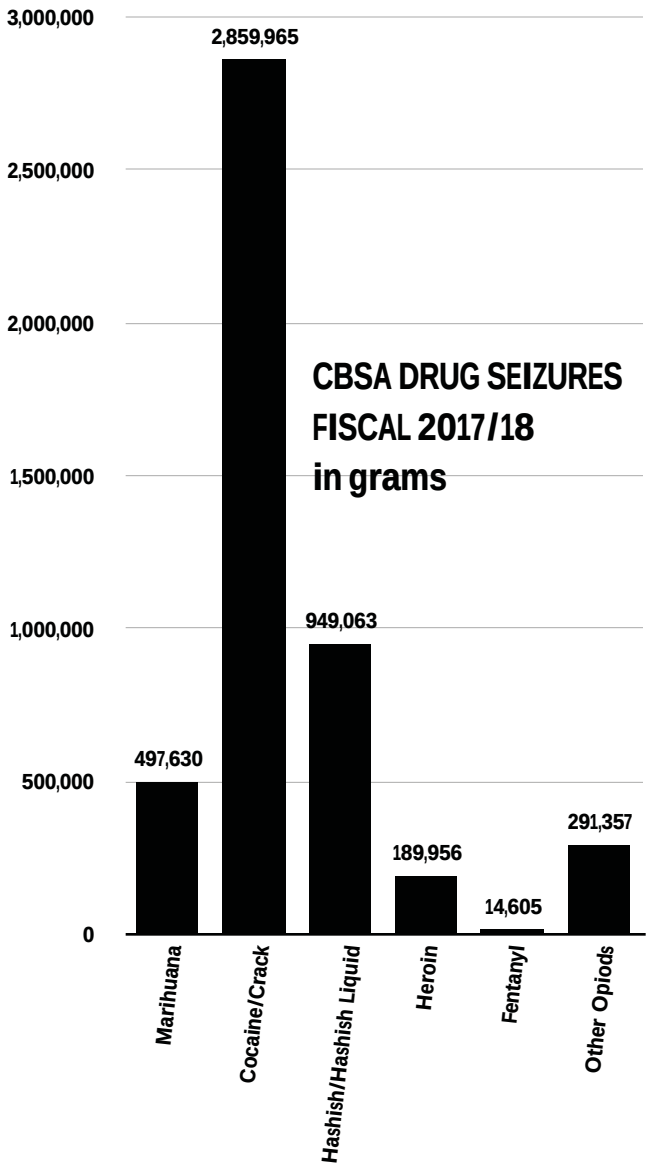
Source: CBSA Seizures for Fiscal Year 2017-2018, accessed August 26, 2018.

$31,280,682 The amount of currency in Canadian dollars that was seized by the CBSA in fiscal 2017/18. The CBSA also seized **$2,831,415** in suspected proceeds of crime.

Source: CBSA Seizures for Fiscal Year 2017-2018, accessed August 26, 2018.

2,860 kgs The weight of cocaine seized by CBSA officials in fiscal 2017/18. This was, by far, the most drugs seized. Hashish (**949 kgs**), marihuana (**497 kgs**) and heroin (**190 kgs**) followed. Furthermore, there were **15,900** kgs, **4,987** litres and **948,108** dosages of other narcotics, drugs and chemicals seized.

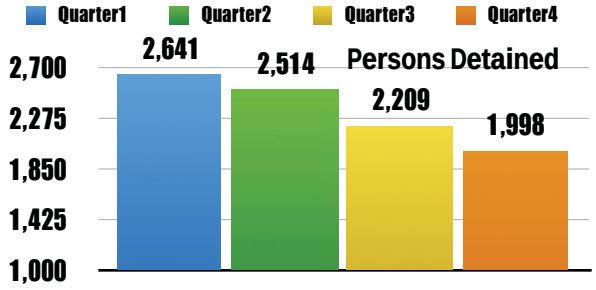
Source: CBSA Seizures for Fiscal Year 2017-2018, accessed August 26, 2018.



416,303 The number of litres of alcohol the CBSA seized during fiscal 2017/18. In addition, there were **343,098** cartons of tobacco products and **90,081** kgs of tobacco seized.

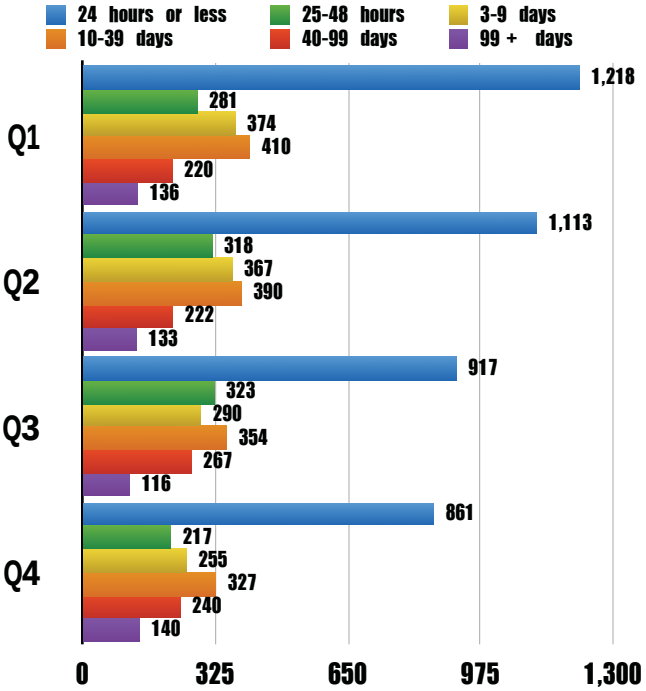
Source: CBSA Seizures for Fiscal Year 2017-2018, accessed August 26, 2018.

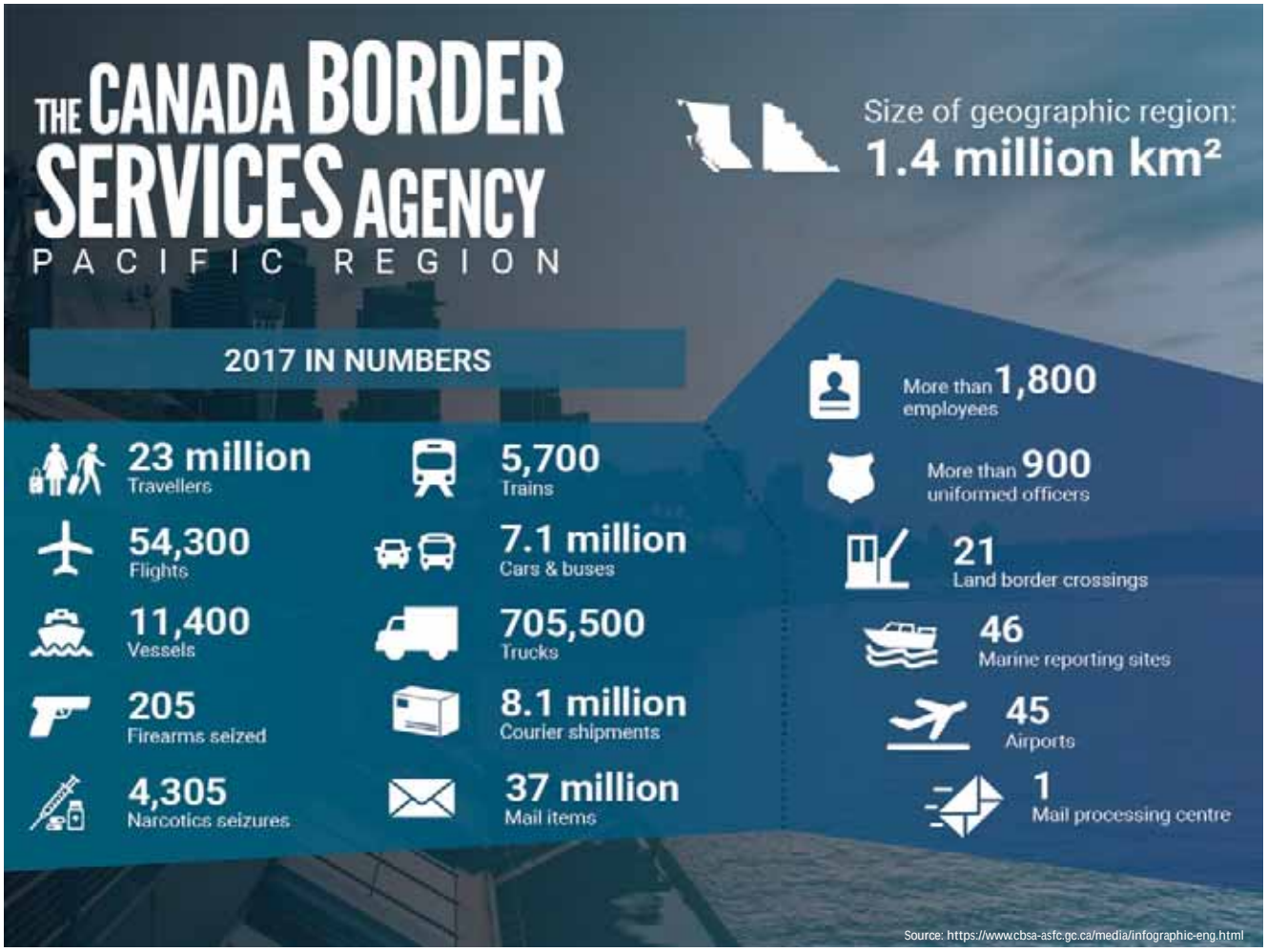
2,641 The number of people detained by the CBSA in the first quarter of fiscal 2017/18. This involved **1,978** detentions in a CBSA facility (Immigration Holding Centre) and another **838** detentions in a non-CBSA facility.



Source: CBSA Quarterly Detention Statistics – 2017-2018, accessed August 26, 2018.

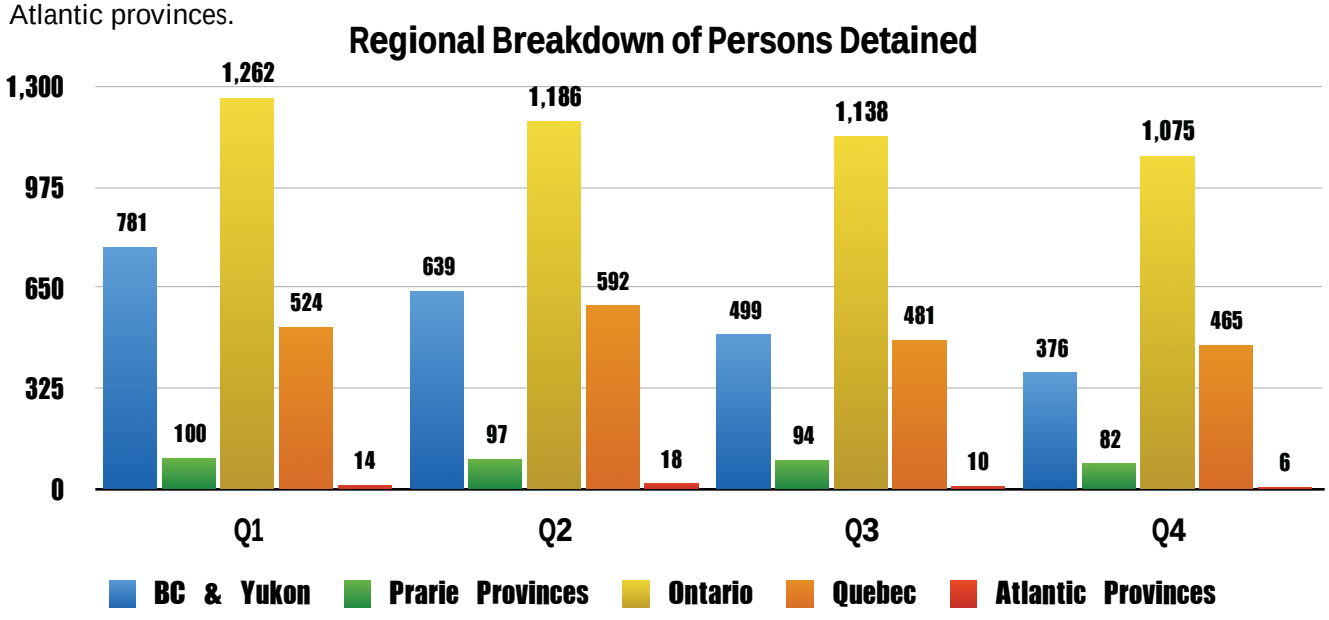
24 hours or less ...is the length most people were detained by the CBSA in each fiscal quarter.





Ontario

The region with the most people under CBSA detention in fiscal 2017/18. This was followed by BC and the Yukon, Quebec, the Prairie provinces and then the Atlantic provinces.



ARREST UNLAWFUL: OFFICER FAILED TO CONFIRM WARRANT

R. v. Kossick, 2018 SKCA 55

A police officer on patrol spotted the accused, a cyclist, who he recognized from previous interactions. The officer was aware the accused was a suspect in a recent bicycle theft. He had received an email about nine days earlier from a colleague that a warrant for the accused's arrest had been requested. The officer radioed his colleague and was informed that the accused could be arrested. The officer followed the accused and ran his name on the police computer but did not read or review the computer information to confirm the existence of the warrant, which had actually been executed four days earlier.

The officer stopped the accused in an empty parking lot, advised him he was under arrest for theft under $5,000, placed him in handcuffs and searched him incident to arrest. In the accused's pockets, the officer found $90 cash, two cellphones and a baggie of methamphetamine weighing 3.82 grams. After the search, the accused told the officer that he had already been arrested and released in relation to the bike theft. The officer then checked the police databases and confirmed the accused's earlier arrest. The officer informed the accused he was no longer under arrest for the bike theft but, instead, was now under arrest for possessing a controlled substance and breaching his release conditions.

While in the backseat of the patrol vehicle, the accused picked up one of his cellphones and began to manipulate it. The officer took the cellphone to prevent the accused from contacting anyone while in custody and as a safety precaution. He placed the cellphone atop his duty bag on the front passenger seat. The officer then observed it receive several message notifications and did not have to touch the cellphone to see incoming messages. At the police station, the officer again observed the cellphone receiving messages, the nature and number of which led him to believe they were

related to the methamphetamine he had seized from the accused. The officer then opened the cellphone by pressing a button and scrolled up and down to view the content of the messages. He even responded to two of the messages. After the accused was placed in cells, the officer went to the exhibit room to make notes about what he had observed on the cellphone. He also answered two incoming calls and listened to audio messages on the cellphone. The accused was then arrested for possessing methamphetamine for the purpose of trafficking and possessing property obtained or derived from a crime. More than five months later, the officer obtained a search warrant for the cellphone which was subsequently examined and the contents of the accused's pre-arrest messages were analyzed. This led to charges of possessing methamphetamine for the purpose of trafficking, possessing property obtained or derived from crime, breach of undertaking for failing to keep the peace, and breach of undertaking for possessing non-prescription drugs.

Saskatchewan Provincial Court

The accused argued that his arrest for bike theft breached his s. 9 *Charter* rights and that the searches of his person and cell phone incident to that arrest had breached his s. 8 rights. In his view, the evidence of the drugs, cash, cellphones and data extracted from the cellphones ought to have been excluded under s. 24(2).

The judge found the bike theft arrest unlawful. Although the officer subjectively believed there was

"Police reliance on erroneous information may be considered objectively reasonable 'unless, in the circumstances at play in the arrest situation, the police could reasonably have made inquiries which would have led to the discovery of the deficiencies or defects' in that information."

an arrest warrant, the officer's belief was not objectively reasonable. The officer could have reasonably made enquiries to discover that his colleague's advice was defective by taking the time to access the police database information that the arrest warrant had been executed. Therefore, the accused was arbitrarily detained under s. 9 of the *Charter* and the searches incident to that arrest breached s. 8. The judge also found the four searches of the accused's cellphone - in the patrol vehicle, in detention at the police station, in the exhibit room and pursuant to the warrant - had not complied with the requirements set down in *R. v. Fearon*, 2014 SCC 77. The judge went on to exclude the evidence under s. 24(2). The accused was acquitted of all charges.

Saskatchewan Court of Appeal

The Crown appealed the accused's acquittals arguing that the trial judge erred by finding the arrest unlawful, the searches unreasonable and in excluding the evidence.

The Arrest

Since the warrant authorizing the accused's arrest had already been executed, the Crown had the the burden of proving the officer had reasonable grounds for the arrest. This would require proof that the officer subjectively believed the accused was subject to an arrest warrant or was otherwise arrestable and that this subjective belief was objectively reasonable.

The Crown submitted that the police can make a valid, warrantless arrest based on erroneous information. Justice Caldwell, delivering the Court of Appeal judgement agreed, but found such a broad statement was not without qualification.

LEGALLY SPEAKING:

Fearon Criteria

"To summarize, police officers will not be justified in searching a cell phone or similar device incidental to every arrest. Rather, such a search will comply with s. 8 where:

(1) The arrest was lawful;

(2) The search is truly incidental to the arrest in that the police have a reason based on a valid law enforcement purpose to conduct the search, and that reason is objectively reasonable. The valid law enforcement purposes in this context are:

(a) Protecting the police, the accused, or the public;

(b) Preserving evidence; or

(c) Discovering evidence, including locating additional suspects, in situations in which the investigation will be stymied or significantly hampered absent the ability to promptly search the cell phone incident to arrest;

(3) The nature and the extent of the search are tailored to the purpose of the search; and

(4) The police take detailed notes of what they have examined on the device and how it was searched."

Supreme Court of Canada Justice Cromwell in *R. v. Fearon, 2014 SCC 77* at para. 83.

"Police reliance on erroneous information may be considered objectively reasonable 'unless, in the circumstances at play in the arrest situation, the police could reasonably have made inquiries which would have led to the discovery of the deficiencies or defects' in that information," he said. Justice Caldwell continued:

> With the question of law settled, the key difficulty with the Crown's argument against the finding of an unlawful arrest is that the judge

found the circumstances had reasonably permitted [the officer] to inquire into the veracity of the information he had received from [his colleague], which had formed the basis of the grounds for arrest. Frankly, I can find no flaw in the judge's finding that the circumstances reasonably allowed [the officer] the time to verify the information he had received from [his colleague].

… [T]he "evolving circumstances" giving rise to [the accused's] arrest did not preclude [the officer] from inquiring into the reliability of [his colleague's] advice. [The officer] had the means to do so and, in fact, had started down that path by keying [the accused's] name into SIMS just before he pulled him over. The information about [the accused] on SIMS was readily-accessible and correct. [The officer] was an experienced police officer who was very familiar with CPIC and SIMS. However, he did not access or read the information about [the accused] available on SIMS until after he had arrested him.

Finally, the circumstances of [the accused's] arrest did not require [the officer] to make a quick decision on the information he had been told. The judge addressed this in more particular terms. She questioned [the officer's] testimony to the effect that he could not have made inquiries on CPIC or SIMS prior to arresting [the accused]. She observed that [the officer] knew [the accused] and knew where he lived—i.e., knew where to locate him if he were to avoid arrest—leading her to conclude there was no real sense of urgency in the arrest. Furthermore, [the accused] was on a bike and [the officer] was in a patrol vehicle. [The officer] testified that, after seeing [the accused], he took the time to call [his colleague]. He then waited to proceed through the intersection and followed [the accused]. At this time he typed [the accused's] name into SIMS and was able to do so without losing sight of him. [The officer] then followed [the accused] "on the street until he was able to make a stop with him in a safe place." Once [the officer] saw an empty parking lot, he signalled [the accused] to pull over into it and [the accused] complied with his commands. [reference omitted, paras. 32-34]

The Court of Appeal found the trial judge did not err in her conclusion that the officer could have reasonably made inquiries that would have disclosed the inaccuracy in the information he had received from his colleague.

The Searches

For a search to be reasonable as an incident to arrest, the arrest must be lawful. Since the accused's arrest was found to be unlawful, the search that uncovered the cellphones, methamphetamine and cash was unreasonable and a breach of s. 8 of the *Charter*. The seizure of the cellphone in the patrol vehicle and the viewing of the message notifications it received was also unreasonable.

The Crown, nevertheless, contended the trial judge erred in applying the *Fearon* criteria to all four of the cellphone searches. In the crown's opinion, the plain view doctrine applied to the first and second searches of the cellphone. But the Court of Appeal reasoned otherwise:

1. **In the patrol vehicle:** The facts of this case did not invoke the plain view doctrine. ***"The plain view doctrine cannot save a search conducted incident to an unlawful arrest,"*** said Justice Caldwell. In order for plain view to be a valid authority, the police must be lawfully in a position from which the evidence was plainly in view. Here, the accused's arrest was unlawful and therefore the police were not lawfully in a place to support their plain view discovery. Furthermore, there was no evidence the officer had probable cause to associate the messages received on the cellphone in his patrol vehicle with any criminal activity. He said he could only see the cellphone had received a number of messages and the names of the message senders. It wasn't until the second search that he was able to read their full content and then formed his belief they were related to methamphetamine trafficking.

2. **At the police station:** The plain view doctrine did not apply because the officer had to open the phone and press a button, and scroll

through and review the messages it had received. At this point, the officer was conducting an exploratory search of the phone and not simply relying on a plain view seizure.

3. **In the exhibit room:** When the officer went to an exhibit room at the police station to make notes of the messages he had earlier reviewed he answered two incoming calls and listened to several voice messages. This action did not satisfy the *Fearon* criteria.

4. **With the warrant:** Since the initial searches of the cellphone were unreasonable, then the search pursuant to the warrant was also unreasonable because the warrant was granted on the basis of the initial searches.

The Court of Appeal found the trial judge applied the appropriate legal framework in her s. 24(2) analysis and did not err in excluding the evidence. The Crown's appeal was dismissed.

Complete case available at www.canlii.org

ARREST MADE IN GOOD FAITH: EVIDENCE ADMITTED

R. v. Maxim, 2018 SKCA 57

A Saskatchewan police officer, with training and significant experience dealing with signals and warning signs associated with individuals transporting contraband and illegal goods, had a motorist stopped at the side of the highway with his emergency lights flashing. When the accused passed by at 89 km/h, he did not slow to the required 60 km/h and he was pulled over. The accused produced a BC driver's licence addressed to Burnaby – believed to be a source point of drugs - and a vehicle rental agreement from Regina. His hands were shaking when he handed over the documents, indicating he was nervous. He said he was coming from Regina and going to Winnipeg to visit family. The officer checked a police database and learned the accused had previously been charged with trafficking in marihuana five years earlier and was suspected of producing marihuana three years earlier. The officer also noted that the vehicle was to be returned to the rental company in two days. He found it odd that the accused would be travelling to see friends in Winnipeg - known in police circles to be a destination for drugs - on a long weekend and travelling on Monday morning, the last day of the weekend. This short period of travel, in the officer's view, was consistent with carrying contraband. The officer was also aware that the use of a rental vehicle was a common way to carry contraband because there is no risk of a personal vehicle being seized by the police. In addition, the officer saw an energy drink - a stimulant used to travel long distances - in the front seat console.

The officer detained the accused for a drug investigation and provided his rights to counsel and police warning. The accused did not appear surprised by being detained but his visible level of nervousness increased including a pulsating carotid artery. The officer performed a pat down search and found a large wad of cash in the accused's pocket (later determined to be $1,040). In the officer's view, this amount was consistent with a drug payment. Although the officer had a drug sniffing dog with him, he did not use it because he was confident the accused had drugs. The officer arrested the accused for possessing a narcotic (some 30 minutes after the stop but only five minutes after the investigative detention). He was again given his right to counsel and the police warning. The officer searched the accused's trunk and located two suitcases containing a total of forty pounds of marihuana in vacuum sealed packages. The officer then rearrested the accused for possessing a narcotic for the purpose of trafficking. He was subsequently charged with possessing cannabis marihuana for the purpose of trafficking under the *Controlled Drugs and Substances Act* (*CDSA*).

Saskatchewan Provincial Court

At trial, the officer admitted that he knew nothing about the accused's background. He said he did not smell any drugs or alcohol in the vehicle nor anything that could be used as a masking agent. He also did he see any drugs or alcohol in the vehicle. The officer also said that most people stopped by the police are nervous, but the accused exhibited more than the base line level of nervousness that he would expect. The officer testified that the amount of cash found on the accused, his throbbing carotid artery and his demeanor in not appearing to be surprised after he was detained for a drug investigation elevated his grounds and led to the arrest.

The judge found the accused had been lawfully stopped under Saskatchewan's *Traffic Safety Act.* Then the officer acquired a reasonable suspicion that the accused had violated or was violating the *CDSA* and lawfully detained him for that investigation. The arrest, however, was found to be unlawful because the officer did not have reasonable grounds to make it. The three additional factors acquired after detention – the cash, the accused's throbbing carotid artery and his non-surprised demeanor to being detained for a drug investigation - were not sufficient to elevate the reasonable suspicion for detention to reasonable grounds for arrest. Therefore, the judge concluded that the accused's ss. 8 and 9 *Charter* rights had been breached.

The judge did, however, find that the admission of the evidence would not bring the administration of justice into disrepute under s. 24(2) of the *Charter*. The *Charter* breach fell at the lowest end of the severity spectrum because the grounds for arrest fell just short. The officer did not act in bad faith, did not exhibit a intentional or blatant disregard for the accused's rights, and his actions were not part of a systemic problem or borne from wilful blindness. The impact of the breach on the accused was in the medium range because the search of a rented vehicle involved a reduced sense of privacy and did not give rise to issues of bodily integrity or human dignity. Finally, society's interest in the case's adjudication on its merits supported admission. As a result, the accused was convicted.

Saskatchewan Court of Appeal

The accused argued that the trial judge erred in his s. 24(2) analysis. He asserted, among other things, that the trial judge failed to take into account the officer's level of experience and training when he considered the seriousness of the breach, as well as the officer's failure to employ the drug detection dog. These factors, he suggested, should have elevated the offending police behaviour to the "serious" end of the spectrum. As for the impact of the breaches on his *Charter*-protected interests, he contended that a person had a substantial privacy interest in a vehicle and he intended on preserving his privacy by locking the luggage. Finally, he argued that the trial judge placed too much weight on society's interest in the case. In his view, the evidence ought to have been excluded under s. 24(2).

The Crown, on the other hand, suggested the trial judge's conclusions were reasonable. The breaches were not serious, they did not significantly impact the accused's *Charter*-protected interests, and society had an interest in seeing the charges determined on its merits. Moreover, the Crown suggested the accused's *Charter* rights were not actually breached.

In this case, Justice Herauf speaking for the Court of Appeal found the trial judge did not err in her s. 24(2) analysis:

> The trial judge made a finding of fact that the police officer did not deliberately seek to violate Charter rights, but instead acted out of an honest, albeit mistaken, belief that his conduct was Charter compliant. In my view, [the accused's] attempt to characterize [the officer's] actions as being at the high end of the seriousness spectrum of offending police behaviour, that [the officer's] decision not to use the drug detection dog as "arrogant" and that his decision to arrest was made in bad faith are not supported by the evidence. [para. 13]

At most, the trial judge found the officer's decision to not use the drug detection dog as negligent which would not place it at the high end of the fault spectrum. Furthermore, the trial judge held the officer's grounds supported a reasonable suspicion and fell just short of the reasonable grounds standard.

As for the impact on the accused's *Charter*-protected interests, there is a lesser expectation of privacy in an automobile and there had been no unjustified or intrusive strip search or body cavity search. Finally, the offence was serious, the evidence was reliable and important to the Crown's case. The trial judge made no error in admitting the evidence. Since the evidence was admissible, there was no need for the Court of Appeal to consider the Crown's alternative argument that their were no breaches of the accused's *Charter* rights. The accused's appeal was dismissed.

Complete case available at www.canlii.org

Editor's note: Additional facts taken from *R. v. Maxim*, 2017 SKPC 37.

REASONABLE GROUNDS STANDARD LESS THAN BALANCE OF PROBABILITIES

R. v. Ha, 2018 ABCA 233

On an unrelated matter, an experienced drug investigator was conducting surveillance from his covert vehicle in a parking lot associated with a shopping centre and grocery store. He saw a red Nissan Maxima with a lone occupant enter the parking lot, pass slowly in front of his vehicle, and then park with its engine running in an area of the lot where there were no vehicles within a 30 to 50 foot radius. The officer thought that the person in the Maxima may be waiting for someone. The driver of the Maxima did not exit the vehicle, and the vehicle did not move for about three minutes. The officer queried the vehicle's licence plate and determined that it was registered to a Dean Thomas, born in 1969. A few minutes later, the Maxima drove past the officer's parked vehicle and moved to another location in the parking lot. After briefly losing sight of the vehicle, the officer regained visual contact and observed the front passenger door of the Maxima open and an Asian male get out and walk about 30 to 40 feet to a nearby Honda Acura. The Asian male was looking around the parking lot, alert to his surroundings.

The officer queried the Acura's licence plate and learned it was registered to a Michael Ha, born in 1983. The officer believed that he had witnessed an apparent drug transaction between the driver of the Maxima and the driver of the Acura, and that he could arrest both individuals. The officer broadcast the observed transaction over his police radio and asked if anyone was familiar with either a Dean Thomas or Michael Ha. The officer's sergeant responded that Michael Ha - who had a cleft palate - was a high-level drug dealer and most likely a supplier. The officer then radioed for assistance and directed two other officers to arrest the occupants of the Acura for possessing a controlled substance for the purpose of trafficking. When the arresting officer stopped the Acura and approached it, he noticed its Asian male driver had a distinctive cleft palate scar. The vehicle was searched and police found drugs and cash.

Alberta Court of Queen's Bench

The officer testified that, prior to speaking to his sergeant, he had reasonable grounds to arrest the accused. However, the arrest was not actually directed until after he spoke to his sergeant. The judge ruled that the officer had the necessary reasonable grounds to make the arrest. He found the officer believed that he had witnessed a drug transaction between the driver of the Maxima and the driver of the Acura, and that he had grounds to arrest both individuals. This belief was based on the officer's experience in drug investigations. He was a seven year veteran with a year-and-a-half in the gang and drugs unit and he had participated in about 30 drug investigations and 75 drug transactions. As well, ***"the cars were located in an isolated area in the parking lot. The transaction was a quick one, no more than two minutes. And the transaction took place inside a***

"Whether the totality of the evidence supports an objective finding of reasonable and probable grounds to arrest, is assessed through the eyes of the reasonable person with the experience and knowledge of the arresting officer."

vehicle where the exact interaction could not be observed." Therefore, there were no breaches of the accused's ss. 8 or 9 *Charter* rights.

Alberta Court of Appeal

The accused submitted that there was no reasonable grounds for his arrest. In his view, the officer's decision to arrest based solely on his observations in the parking lot was not objectively reasonable. And, even if the information from the officer's sergeant could be considered, he maintained the totality of the evidence nevertheless fell short. As a result of this *Charter* breach, the drugs and cash found upon the unreasonable search of his motor vehicle ought to have been excluded under s 24(2). The Crown contended, however, that the officer obtained additional information from his sergeant before he directed the arrest, which he was allowed to consider in forming his grounds. His observations plus the information that Michael Ha was a drug dealer and was likely a supplier rendered the officer's grounds objectively reasonable.

Reasonable Grounds for Arrest

In describing the reasonable grounds standard for arrest, a two member majority of the Court of Appeal stated:

> Charter-compliant "reasonable and probable grounds" have a subjective and an objective component. The arresting officer must subjectively have reasonable and probable grounds on which to base the arrest. The grounds must also be justifiable from an objective point of view such that a reasonable person placed in the position of the arresting officer, must be able to conclude that there were reasonable and probable grounds for the arrest. Police are not, however, required to establish a prima facie case for a conviction before making an arrest. [para. 18]

In this case, there was no dispute that the officer subjectively believed he had grounds for the arrest. Subjective belief alone, however, is insufficient. The objective component must also be established based on a consideration of the entire constellation of factors. In assessing whether objective reasonable grounds exists, the majority made the following comments:

- "It is trite that the question of the existence of reasonable and probable grounds cannot be informed by what the police found subsequent to arrest, or on the basis of the whole of the evidence at the trial." [para. 23]
- "[I]it is only the point at which the accused's liberty is actually interfered with that the assessment of the constitutionality of the arrest becomes relevant." [para. 24]
- "Whether the totality of the evidence supports an objective finding of reasonable and probable grounds to arrest, is assessed through the eyes of the reasonable person with the experience and knowledge of the arresting officer." [para. 28]
- "[T]he mere fact that there may be other plausible, innocent explanations for a transaction observed by a police officer does not prevent, or preclude, the formation by an experienced, knowledgeable police officer of reasonable and probable grounds that she or he is observing an illegal transaction. Put another way, the presence of other possible, plausible, innocent explanations for police-observed behaviour does not legally or automatically negate credibly-based probability, that is, reasonable and probable grounds." [paras. 33-34]
- "[T]he test is not balance of probabilities, or exclusion of any other rational inference; rather, the test is … subjective grounds justifiable on an objective basis, but not requiring a prima facie case for conviction. As has been stated many times, the 'reasonable grounds' standard is not only less than that required for conviction,

but is also less than the civil standard of proof." [para. 35]

- "[T]he standard of credibly-based probability neither requires an officer to satisfy him or herself that there is evidence of proof beyond a reasonable doubt nor even a prima facie case. It is self-evident that only information that a police officer has good reason to believe is unreliable can be disregarded, and equivocal or exculpatory information cannot be ignored." [para. 36]

- "The material inquiry is not whether particular conduct is 'innocent' or 'guilty'; the test is 'whether a reasonable person in the position of the officer would conclude that there were reasonable and probable grounds'." [para. 37]

- "The reality is that arrest is a dynamic, and in this case, a collective process, not a frozen moment in time. While it is likely the arrest commenced, as defence counsel urged, at the moment the police 'turned on the cherries', arrest is not complete until the liberty of the subject is restrained." [para. 39]

Applying these points to this case, the majority concluded that the trial judge correctly found that reasonable and probable grounds for the accused arrest had been established on the totality of the evidence. There was no reason for the officer to question the trustworthiness of the information provided by his sergeant. The officer's observation of a suspected drug transaction between the drivers of the two vehicles, given his experience in drug investigations, combined with the information provided by his sergeant were sufficient to ground objective reasonableness. In other words, the factors that formed the bases for the officer's belief were objectively reasonable. Thus, the accused's ss. 8 or 9 *Charter* rights were not violated.

"The material inquiry is not whether particular conduct is 'innocent' or 'guilty'; the test is 'whether a reasonable person in the position of the officer would conclude that there were reasonable and probable grounds'."

A Concurrent View

Justice Slatter wrote his own opinion. In reviewing whether the officer had the necessary grounds for arrest, he reviewed (1) the standard of proof or knowledge that an officer must have, (2) the point in time at which the knowledge of the officer is to be measured, (3) the information police are entitled to rely on, and (4) the evidence or inferences that a judge can use in assessing whether and officer had reasonable grounds.

Justice Slatter first noted, ***"the criminal law … continues to engage numerous standards of proof, some of them driven by statutory provisions: reasonable grounds to suspect; reasonable grounds to believe, or reasonable and probable grounds; prima facie case; balance of probabilities; and proof beyond a reasonable doubt."*** He went on and reviewed these various standards to conclude:

> In summary, "reasonable grounds to believe" requires a factually based likelihood that there are grounds for the arrest, rising above mere suspicion, but not necessarily demonstrating grounds on a balance of probabilities. The test must be applied in a common sense manner, having regard to the circumstances in which the police find themselves, and the entire constellation of facts. The court must ask if there are objectively verifiable facts that would have caused a reasonable person with the training and experience of the police officer, who was aware of the information known to the officer, to believe in the facts supporting the arrest. [para. 70]

As for when an officer must have "reasonable grounds to believe", Justice Slatter found those grounds need not be tested at the moment the subjective decision to make an arrest is made, but when the arrest was actually made:

> [I]n determining whether reasonable grounds to arrest existed, the court must examine all of the information available to the officers up to and including the moment when they stopped the Acura and arrested the [accused]. By that time, in addition to all the other information they had, they would have been able to observe that

> the driver of the vehicle was an Asian male with a cleft palate scar. [para. 75]

As for what information the officers could rely on, Justice Slatter rejected the accused's argument that the officer who made the decision to arrest could only consider the information actually known to him in determining whether he had reasonable grounds. ***"Policing is a team sport,"*** said Justie Slatter. ***"When a squad of police officers engage in any activity, such as an arrest or search, the knowledge of the entire group is relevant. In many investigations there will be no one officer who knew all of the relevant information about the situation."*** He continued:

> [O]ne police officer can rely on information conveyed by another without inquiring into the reliability or source of that information. Information exchanged between the police is not subject to the same scrutiny as information received from confidential informants or civilians. If the conveyed information is later shown to be reliable, it can be used to justify the arrest.
>
> […]
>
> It follows that when a reviewing court is examining whether there were reasonable grounds for the arrest, it is the knowledge of the police team that is relevant, not just the knowledge of the individual officer who may have actually detained the suspect. [paras. 79-80]

Finally, Justice Slatter looked at what evidence and inferences a court could use in determining whether an officer had reasonable grounds. On this point, he stated:

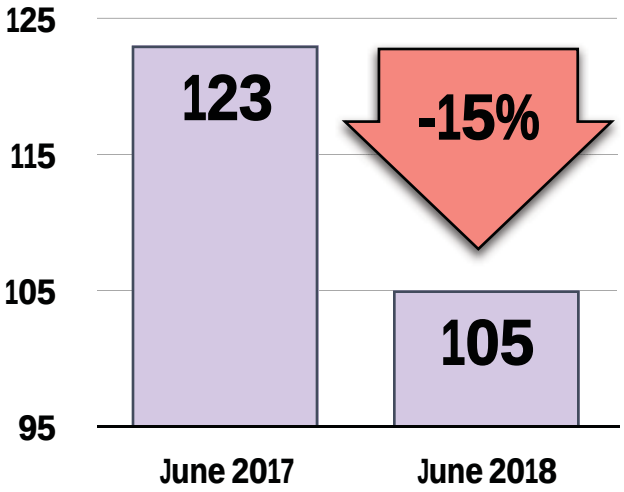
- "The police are not entitled to make an arrest based on mere suspicion or hunches. The belief behind the arrest must be objectively reasonable, which means that it must be based on the information known to the arresting team." [para. 81]
- "Mere speculation, or postulating other hypothetical explanations for events, are not necessarily sufficient to negate a reasonable belief in grounds for an arrest. The absence of evidence or a plausible innocent alternative can raise a reasonable doubt. A plausible innocent alternative does not, however, preclude establishing 'objectively reasonable grounds to believe', or even necessarily preclude proof on a balance of probabilities. The mere fact that there might be an equally plausible innocent explanation for what the police regarded as being suspicious does not prevent the police from having 'reasonable grounds to believe' they observed a crime in progress." [para. 82]
- "Factors that are exclusively innocuous generally cannot be combined together to provide reasonable grounds to believe an offence has occurred. However, factors that can support both an innocuous and a suspicious conclusion can be "mutually reinforcing" or can be combined together to provide reasonable grounds, because the mere fact that an observation might have an innocent explanation does not prevent a police officer from having reasonable grounds to believe that it was sinister in nature." [para. 84]
- "'Reasonable grounds to believe' do not depend on the police's view of the scenario being more probable than not. Even if it is possible that a brief suspicious interaction in a parking lot is innocent in fact, or is capable of an innocent explanation, that does not prevent the police officers from forming a reasonably based belief that the transaction is criminal in nature… Even if it is a '50-50 proposition' as to whether the transaction is innocent or criminal, it may still form the basis of an objectively reasonable belief in the criminal scenario. An observation does not have to be overtly and exclusively criminal to provide justification for an arrest. Therefore, if the police view a suspicious interaction in a dark parking lot they may form a reasonable belief that it is a criminal transaction, even if some people who buy things on the Internet close their transactions in this way." [para. 89]
- "Whether there are reasonable grounds to believe in the facts supporting the arrest is an inference that must be examined based on the particular facts known to the police." [para. 90]

In this case, Justice Slatter found all of the observed facts, while not conclusive of criminal activity, considered collectively in light of the police officers' experience were sufficient to provide a reasonable belief that criminal activity had been observed. The accused's appeal was dismissed.

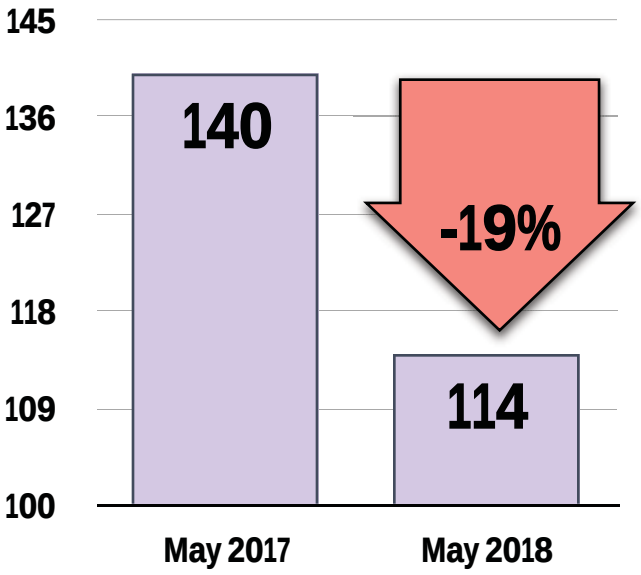
Complete case available at www.albertacourts.ab.ca

ILLICT DRUG OVERDOSE DEATHS IN 2018

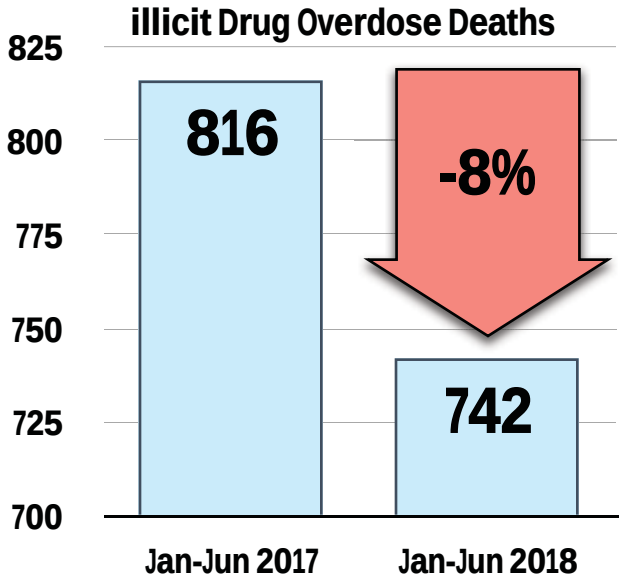
The Office of BC's Chief Coroner has released statistics for illicit drug overdose deaths in the province from **January 1, 2008 to June 30, 2018**. In June there were 105 suspected drug overdose deaths. This represents a -**15%** decrease over the number of deaths occurring in June 2017 and a -**8%** decrease over May 2018. The June 2018 statistics amount to about 3.5 people dying every day of the month.



In May there were 105 suspected drug overdose deaths. This represents an **19%** decrease over the number of deaths occurring in May 2017.



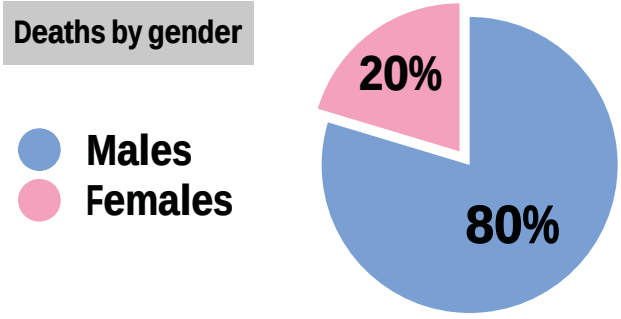
There were a total of 742 illicit drug overdose deaths from January through June 2018. This is 74 fewer deaths than last year's total at this time.

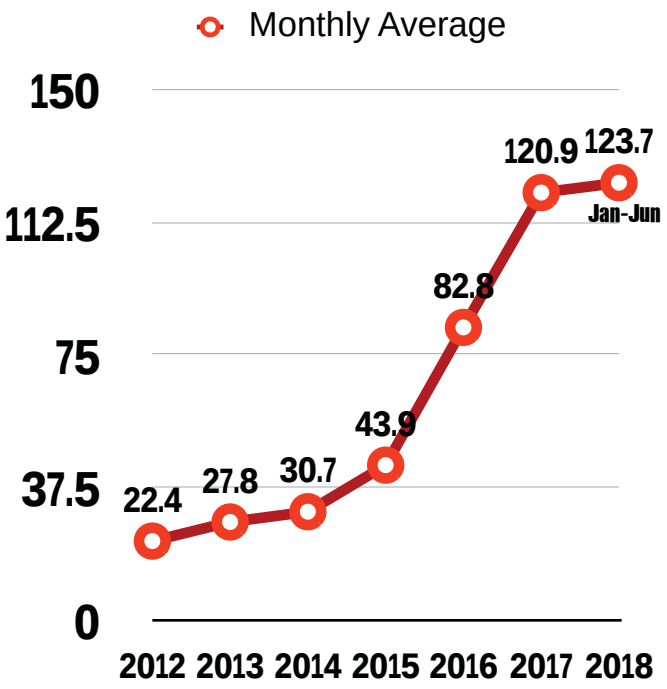


The 1,449 overdose deaths last year amounted to more than a 335% over 2013. Moreover, the report attributes fentanyl laced drugs as accounting for the increase in deaths.

People aged 30-39 were the hardest hit so far in 2018 with 192 illicit drug overdose deaths followed by 50-59 year-olds at 173 deaths. People aged 40-49 years-old had 161 deaths while those aged 19-29 had 144 deaths. Vancouver had the most deaths at 193 followed by Surrey (**111**), Victoria (**47**), Kelowna (**31**), Prince George (**25**) and Kamloops (**22**).

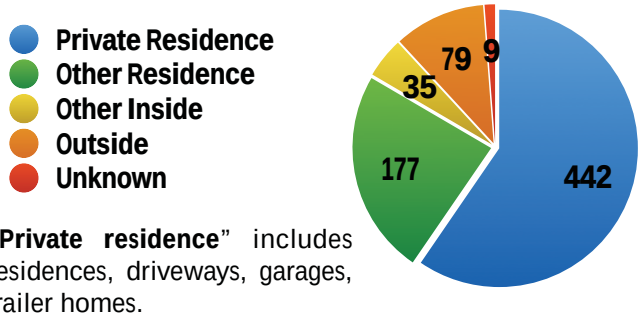
Males continue to die at almost a **4:1** ratio compared to females. From January to June 2018, **591** males have died while there were **151** female deaths.





The 2018 data indicates that most illicit drug overdose deaths (**88.2%**) occurred inside while **10.6%** occurred outside. For nine (9) deaths, the location was unknown.

Deaths by location: Jan-Feb 2018



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

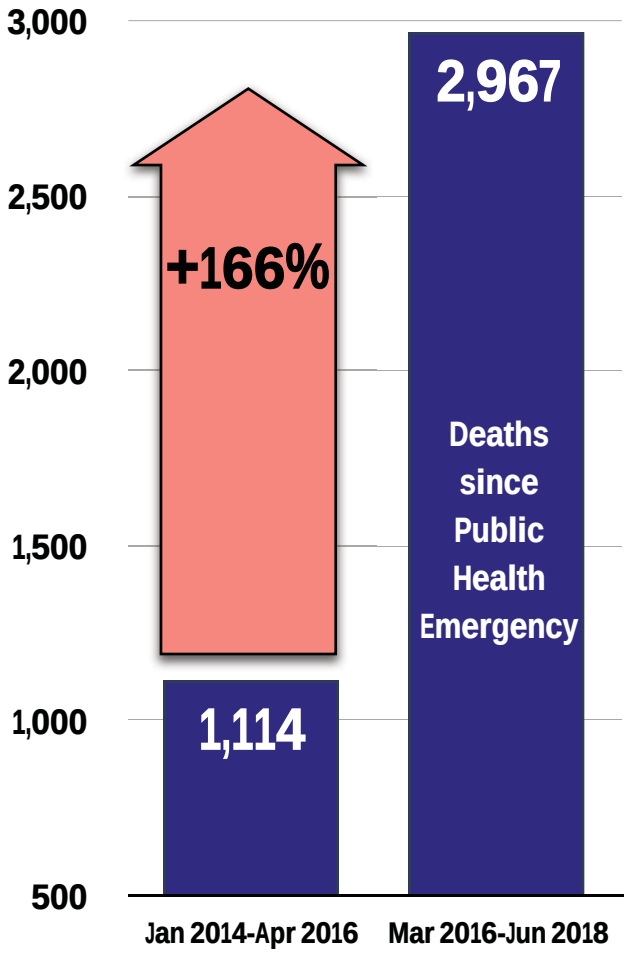
"**Other residence**" includes hotels, motels, rooming houses, shelters, etc.

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

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

DEATHS SINCE PUBLIC HEALTH EMERGENCY

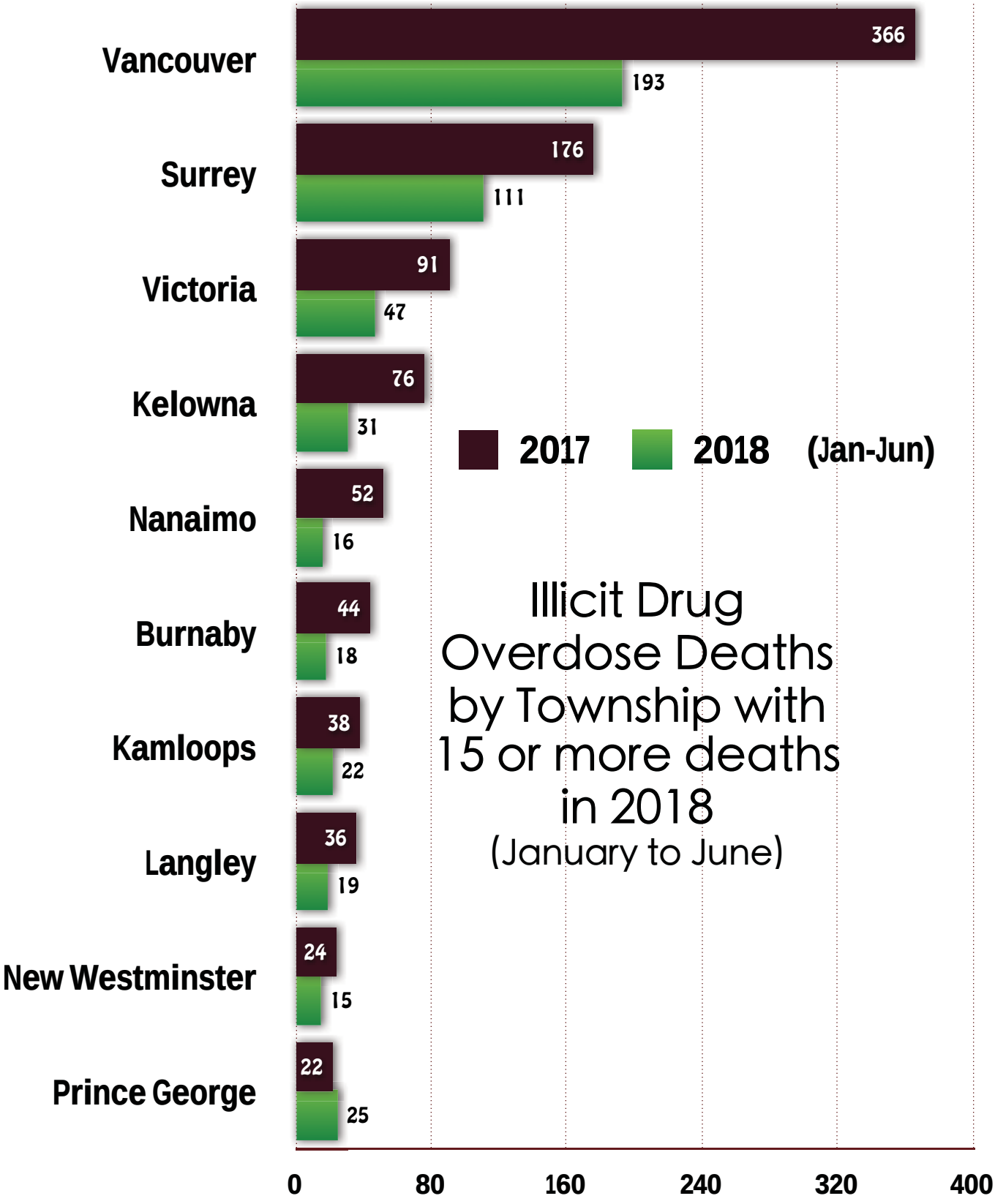
In April 2016, BC's provincial health officer declared a public health emergency in response to the rise in drug overdoses and deaths. The number of overdose deaths in the 27 months preceding the declaration (Jan 2014-Mar 2016) totaled **1,114**. The number of deaths in the 27 months following the declaration (April 2016-June 2018) totaled **2,967**. This is an increase of **166%**.



Source: -Illicit Drug Overdose Deaths in BC - January 1, 2008 to June 30, 2018. Ministry of Justice, Office of the Chief Coroner. August 2, 2018.

TYPES OF DRUGS

The top four detected drugs relevant to illicit drug overdose deaths from 2016 - 2018 were fentanyl, which was detected in **75.3%** of deaths, cocaine (**48.2%**), methamphetamine/amphetamine (**31.6%**), and heroin (**24.3%**).


Vancouver
366
193
Surrey
176
111
Victoria
91
47
Kelowna
76
31
Nanaimo
52
16
Burnaby
44
18
Kamloops
38
22
Langley
36
19
New Westminster
24
15
Prince George
22
25
2017
2018 (Jan-Jun)
Illicit Drug Overdose Deaths by Township with 15 or more deaths in 2018
(January to June)
0
80
160
240
320
400

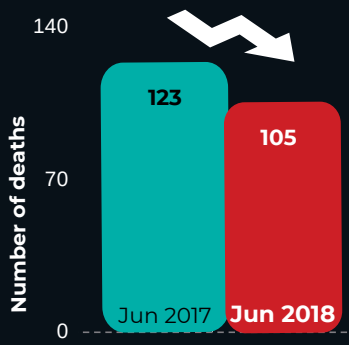
Illicit Drug Overdose Deaths in BC, Jan-Jun 2018

BRITISH COLUMBIA Coroners Service

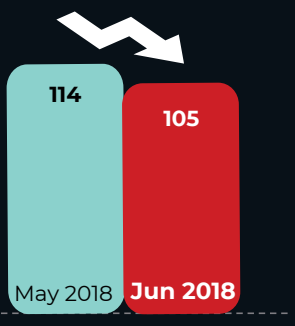
105 Illicit drug overdose deaths in June 2018

~ 3.5 illicit drug overdose deaths per DAY in June 2018

15% decrease compared to June 2017

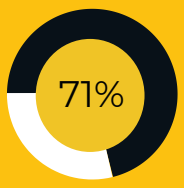


8% decrease compared to May 2018



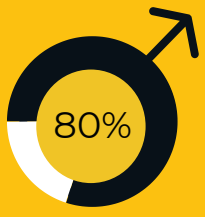
Illicit drug overdose deaths by age group and sex, 2018

30 to 59 years old

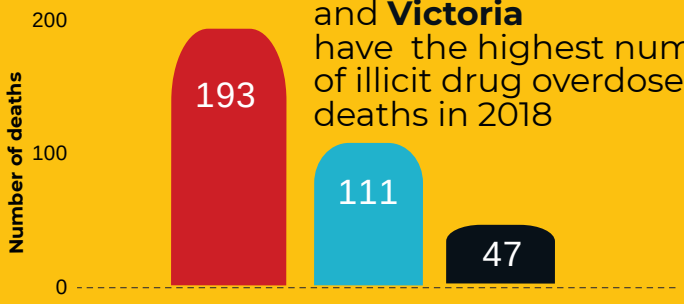


19 to 59 years old

Male



Number of illicit drug overdose deaths by city, 2018

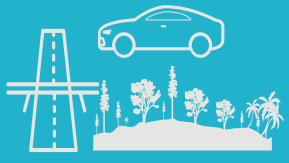


Vancouver, **Surrey** and **Victoria** have the highest number of illicit drug overdose deaths in 2018

Illicit drug overdose deaths by place of injury, BC, 2018

60% at private residences

29% at other inside locations (e.g., other housing, hotel/motel, public buildings)



11% at outdoor locations (e.g., parks, vehicles, streets)

2017 POLICE REPORTED CRIME

In July 2018 Statistics Canada released its *"Police-reported crime statistics in Canada, 2017"* report. Highlights of this recent collection of crime data include:

- There were **1,958,023** crimes (excluding traffic) reported to Canadian police in 2017; this represents **45,271** more crimes reported when compared to 2016.
- The total crime rate increased **+1%**. This includes a violent crime rate rise of **+3%** and a property crime rate rise of **+1%**.

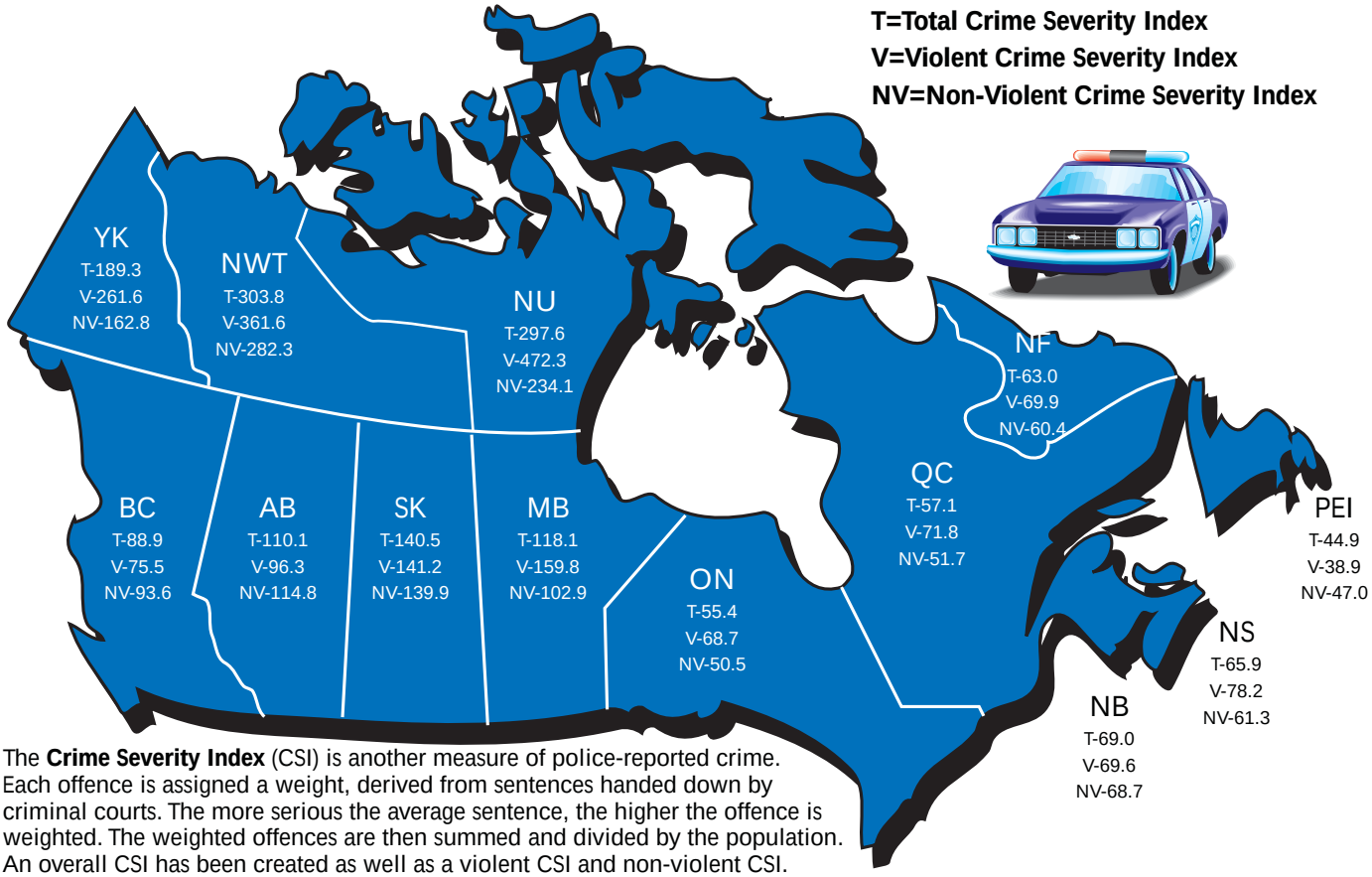
Source: Statistics Canada, 2016, "Police-reported crime statistics in Canada, 2015, Catalogue no. 85-002-X,released on July 23, 2018.

Police-Reported Impaired Driving Offences

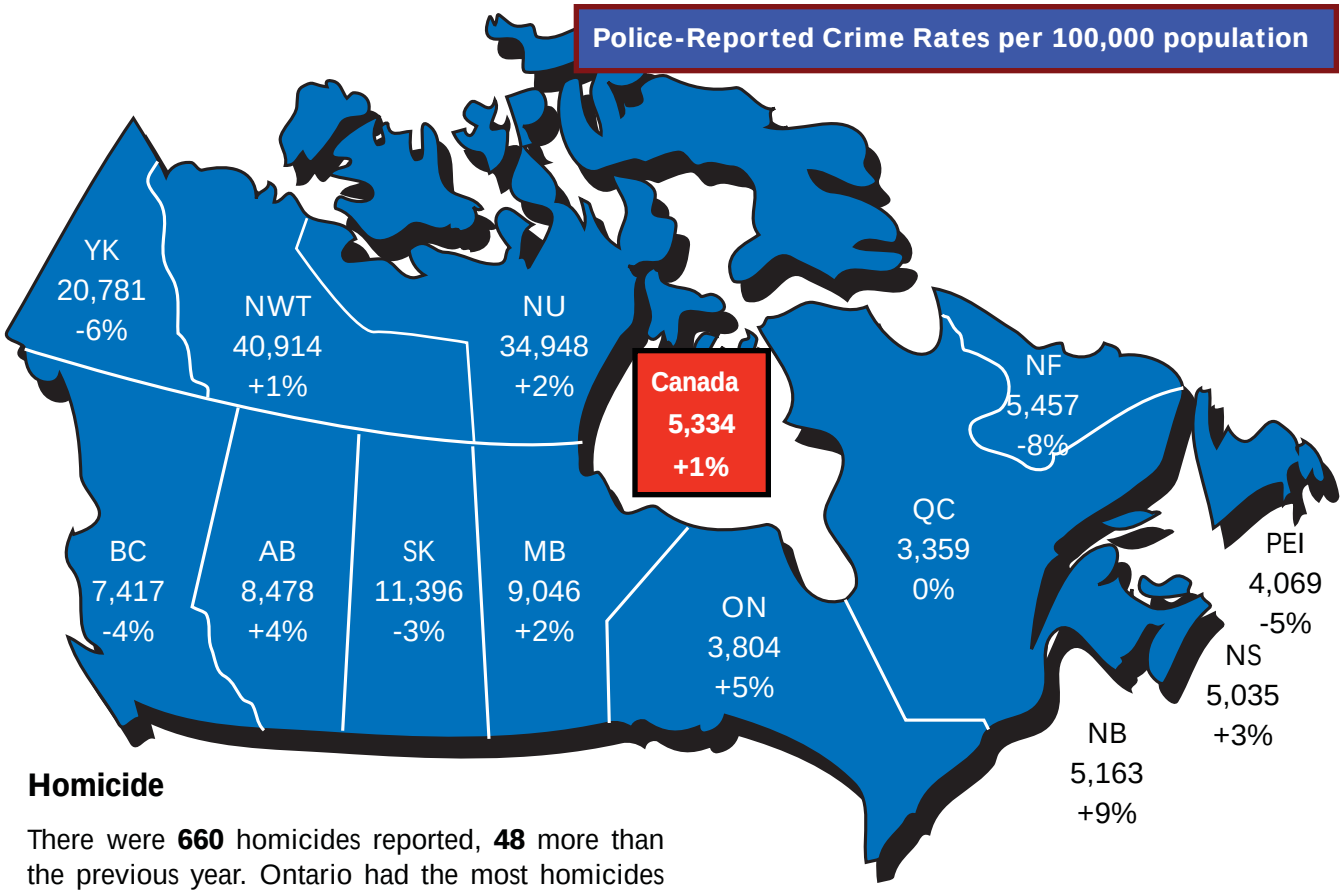
Province	Rate	Impaired Driving Offences	Rate change 2016 to 2017
SK	529	6,153	-5%
PEI	280	426	-14%
AB	273	11,683	-6%
MB	270	3,612	+5%
NS	266	2,536	+1%
NF	266	1,409	+3%
NB	236	1,793	+6%
BC	229	11,042	-5%
QC	168	14,121	-11%
ON	101	14,396	-4%

Police-Reported Crime Severity Indexes

T=Total Crime Severity Index
V=Violent Crime Severity Index
NV=Non-Violent Crime Severity Index



The **Crime Severity Index** (CSI) is another measure of police-reported crime. Each offence is assigned a weight, derived from sentences handed down by criminal courts. The more serious the average sentence, the higher the offence is weighted. The weighted offences are then summed and divided by the population. An overall CSI has been created as well as a violent CSI and non-violent CSI.



Homicide

There were **660** homicides reported, **48** more than the previous year. Ontario had the most homicides at **196**, followed by Alberta (**118**), British Columbia (**118**) and Quebec (**93**). PEI reported no homicides while the Northwest Territories reported two (**2**) homicides followed by Newfoundland with four (**4**). As for provincial or territorial homicide rates, the Yukon had the highest rate (**20.8** per 100,000 population) followed by Nunavut (**15.79**), Northwest Territories (**4.49**), Manitoba (**3.51**), Saskatchewan (**3.18**) and Alberta (**2.75**). As for Census Metropolitan Areas (CMA's), Thunder Bay, ON had the highest homicide rate at **5.80**. The Canadian homicide rate was **1.68**.

Top CMA Homicide Rates per 100,000

CMA	Rate	CMA	Rate
Thunder Bay, ON	5.80	Kelowna, BC	2.99
Abbotsford-Mission, BC	4.72	Winnipeg, MB	2.96
Brantford, ON	3.36	Barrie, ON	2.25
Edmonton, AB	3.49	Calgary, AB	2.07
Regina, SK	3.15	Vancouver, BC	2.02

Canada's Top Ten Reported Crimes

Offence	Number
Theft Under $5,000 (non-motor vehicle)	504,557
Mischief	262,116
Administration of Justice Violations	216,836
Assault-level 1	163,034
Break and Enter	159,336
Fraud (excluding identity fraud)	112,863
Disturb the Peace	96,381
Theft of Motor Vehicle	85,020
Alcohol Impaired Driving	65,558
Uttering Threats	62,074

Robbery

In 2017 there were **22,739** robberies reported, resulting in a national rate of **62** robberies per 100,000 population. Manitoba had the highest robbery rate followed by Saskatchewan and Alberta.

Police-Reported Robberies

Province/ Territory	Rate	Robberies	Rate change 2016 to 2017
MB	176	2,350	+12%
SK	87	1,014	-1%
AB	76	3,238	+3%
NWT	65	29	-6%
ON	65	9,238	+10%
BC	51	2,476	-18%
QC	43	3,642	-3%
NU	39	15	+47%
NF	35	185	-17%
NS	33	311	+14%
YK	31	12	-50%
NB	28	212	-8%
PEI	11	17	-7%
CANADA	**62**	**22,739**	**+2%**

- Winnipeg, MB had the highest CMA rate for robbery in Canada (**258**), **+13%** higher than its 2016 rate. Sherbrooke, QC and Trois-Rivieres, QC both had the lowest rate (**20**). However, Trois-Rivieres, QC reported a jump of **54%** in its robbery rate. Guelph, ON (**+34%**), Saguenay, QC (**+34%**) and Hamilton, ON (**+27%**) also saw high double digit rate increases.
- Three CMAs reported declines in robberies of at least 30% or more: Moncton, NB (**-37%**), Regina, SK (**-34%**), and Abbotsford-Mission, BC (**-30%**).

Top Ten CMA Robbery Rates per 100,000

CMA	Rate	CMA	Rate
Winnipeg, MB	258	Hamilton, ON	88
Saskatoon, SK	132	Regina, SK	83
Thunder Bay, ON	127	Calgary, AB	77
Edmonton, AB	104	Windsor, ON	76
Toronto, ON	89	Montreal, QC	70

Break and Enter

In 2017 there were **159,336** break-ins reported to police. The national break-in rate was **434** break-ins per 100,000 people. Nunavut had the highest break-in rate (**1,534**) followed by the Northwest Territories (**1,027**).

Police-Reported Break-ins

Province/ Territory	Rate	Break-ins	Rate change 2016 to 2017
NU	1,534	583	-13%
NWT	1,027	457	+1%
SK	839	9,768	-6%
MB	721	9,650	-1%
AB	717	30,746	+7%
BC	551	26,529	-12%
YK	489	188	-30%
NB	478	3,634	+11%
NF	404	2,137	-21%
QC	361	30,304	-4%
ON	297	42,218	+4%
NS	292	2,784	-5%
PEI	222	338	-13%
CANADA	**434**	**159,336**	**-2%**

Police-reported Crime in Canada, 2017

Canada's crime rate:

Number of *Criminal Code* incidents (excluding traffic) per 100,000 population

5,334

The **Crime Severity Index (CSI)**[1] was 2% higher in 2017 than in 2016, marking the third consecutive increase after 11 years of declines. The rise in Canada's CSI in 2017 was the result of increases in numerous offences most notably, sexual assault (level 1), possession of stolen property, motor vehicle theft, and homicide.

2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
104.1	101.3	100.0	95.3	90.6	87.8	82.9	77.6	75.4	68.8	66.7	70.1	71.7	72.9

Among census metropolitan areas, the five largest increases and decreases in the CSI[1] were:

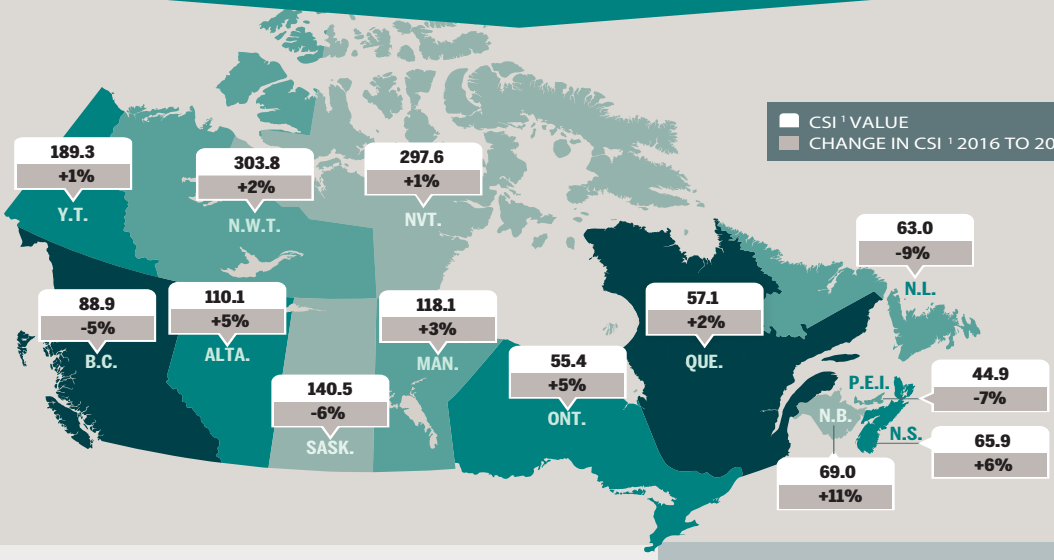
Top 5 increases

Greater Sudbury	+25%
Moncton	+15%
Guelph	+15%
Kitchener-Cambridge-Waterloo	+14%
St. Catharines-Niagara	+12%

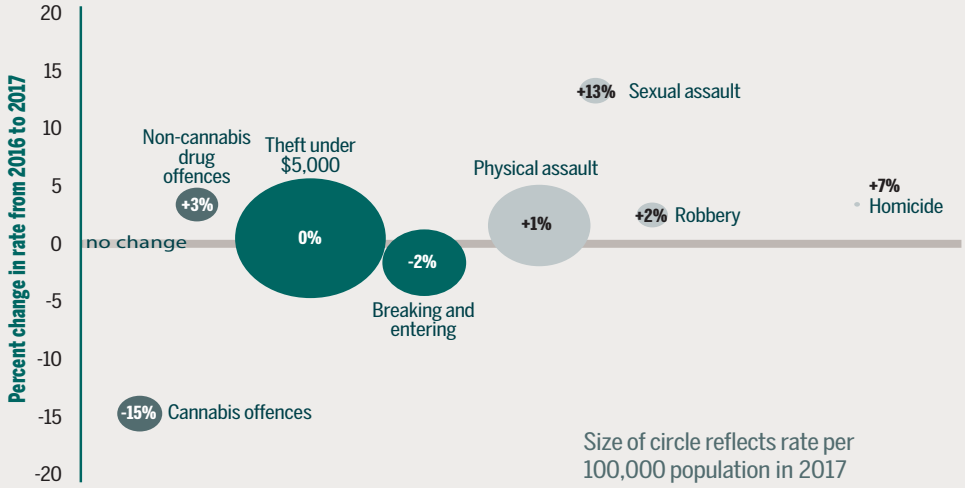
Top 5 decreases

St. John's	-15%
Regina	-11%
Vancouver	-6%
Peterborough	-3%
Victoria	-3%

In 2017, nine provinces and territories reported higher CSIs[1] and four reported declines



Year-over-year percent change for selected offences



Prior to legalization, cannabis offences declined for the 6th year in a row

-15%

In a year of discussion around sexual misconduct, the police-reported rate of sexual assault increased

+13%

1. While the crime rate measures the volume of criminal violations, the Crime Severity Index (CSI) is a measure of both the volume and severity of police-reported crime. To determine the severity of a crime, all crimes are assigned a weight based on actual sentences handed down by the courts in all provinces and territories. More serious crimes are assigned higher weights, while less serious crimes are assigned lower weights. As a result, more serious offences have a greater impact on changes in the index.

Source: Statistics Canada, Canadian Centre for Justice Statistics, Uniform Crime Reporting Survey.
"Police-reported crime statistics in Canada, 2017." *Juristat*. Statistics Canada Catalogue no. 85-002-X.

Catalogue number: 11-627-M
ISBN: 978-0-660-27094-4

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Evidence in Criminal Investigations: Latest Developments in Law & Practice

February 8, 2019
In Person or Webcast Click here.

12th Annual Intensive Course on Drafting and Reviewing Search Warrants

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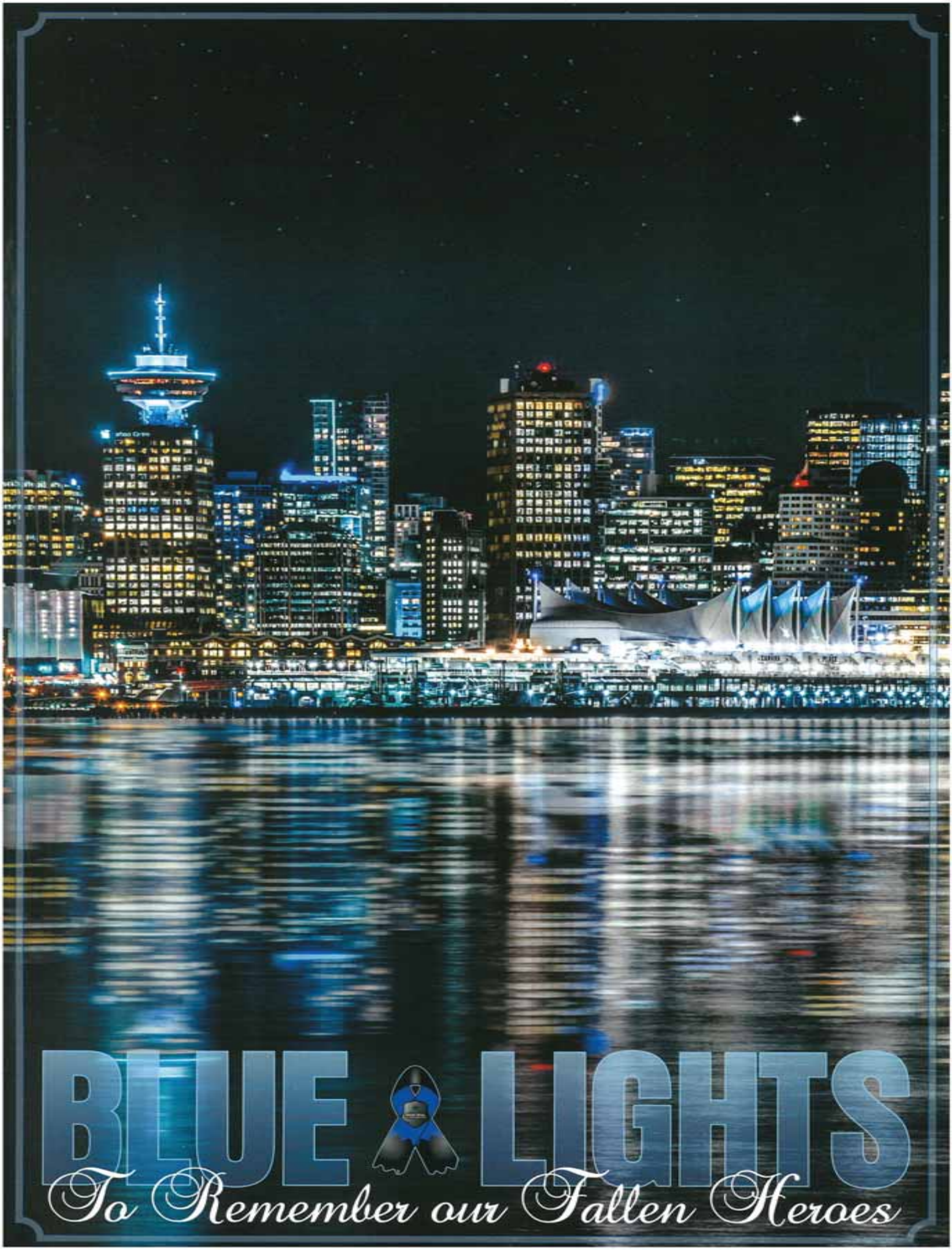
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To Remember our Fallen Heroes

2018 BC LAW ENFORCEMENT MEMORIAL SERVICE

Sunday, September 30, 2018 at 1:00 pm
BC Legislature, Victoria, BC

Parade participants to form up at 12:00 pm in the 700 block of Wharf Street.
Parade will step off at 12:40 pm

OFFICERS BEING HONOURED

Constable John Davidson

Abbotsford Police Department
End of Watch: November 6, 2017

Constable Ian Jordan,

Victoria Police Department
End of Watch: April 11, 2018

click here for more info

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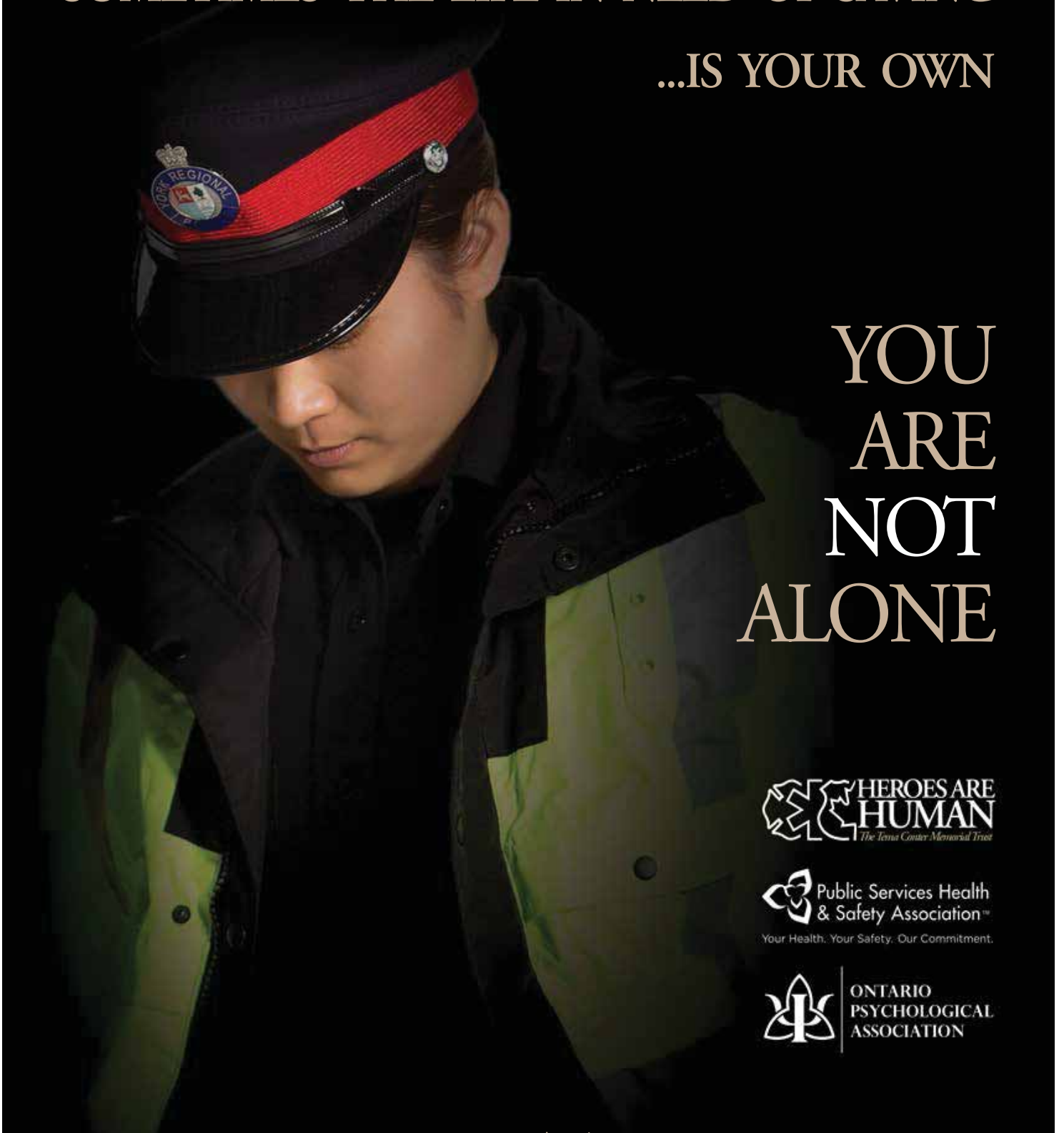

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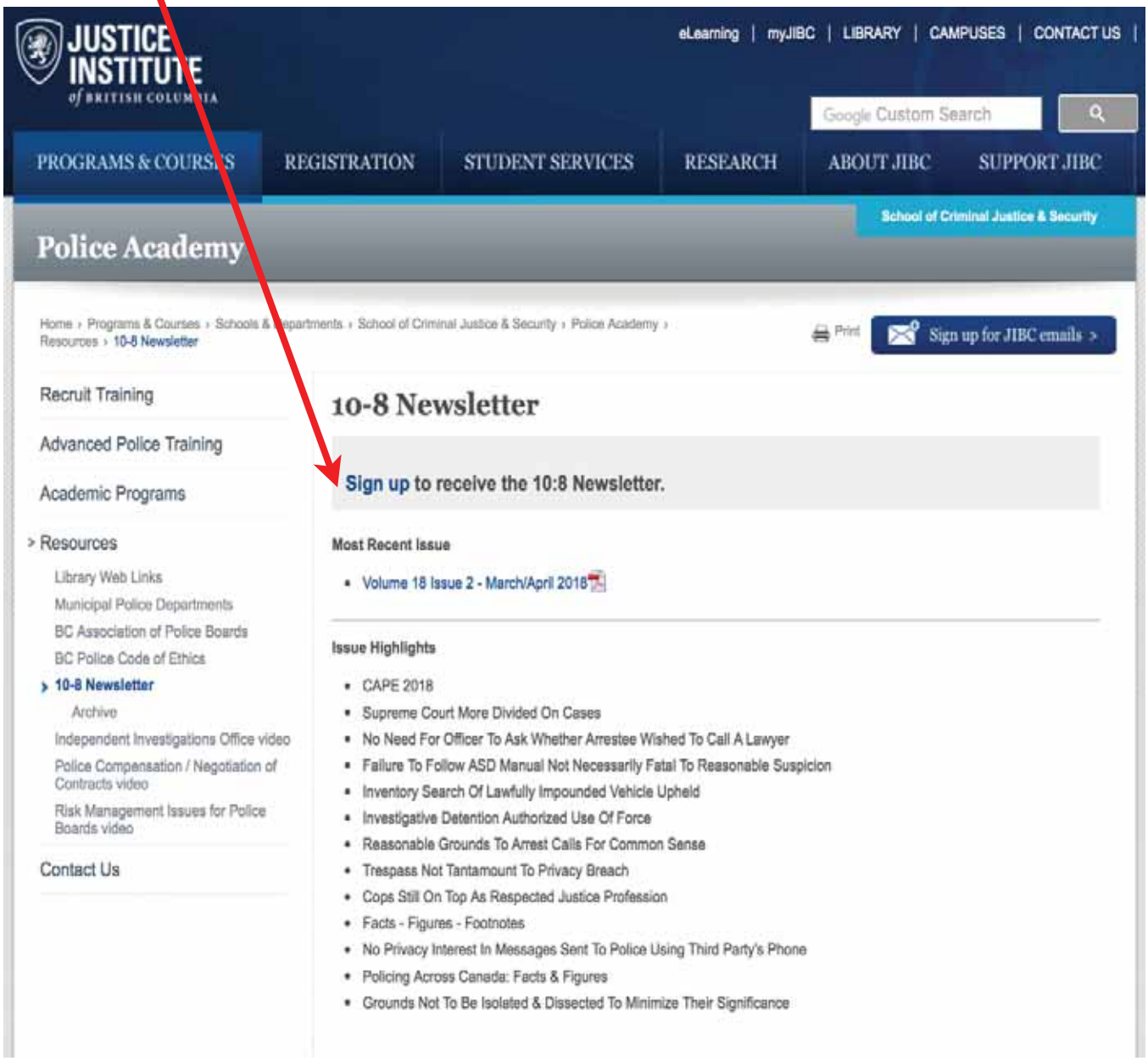

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November 19-December 21, 2018

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September 6-7, 2018

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Application for and Execution of Search Warrants (INVE-1006)

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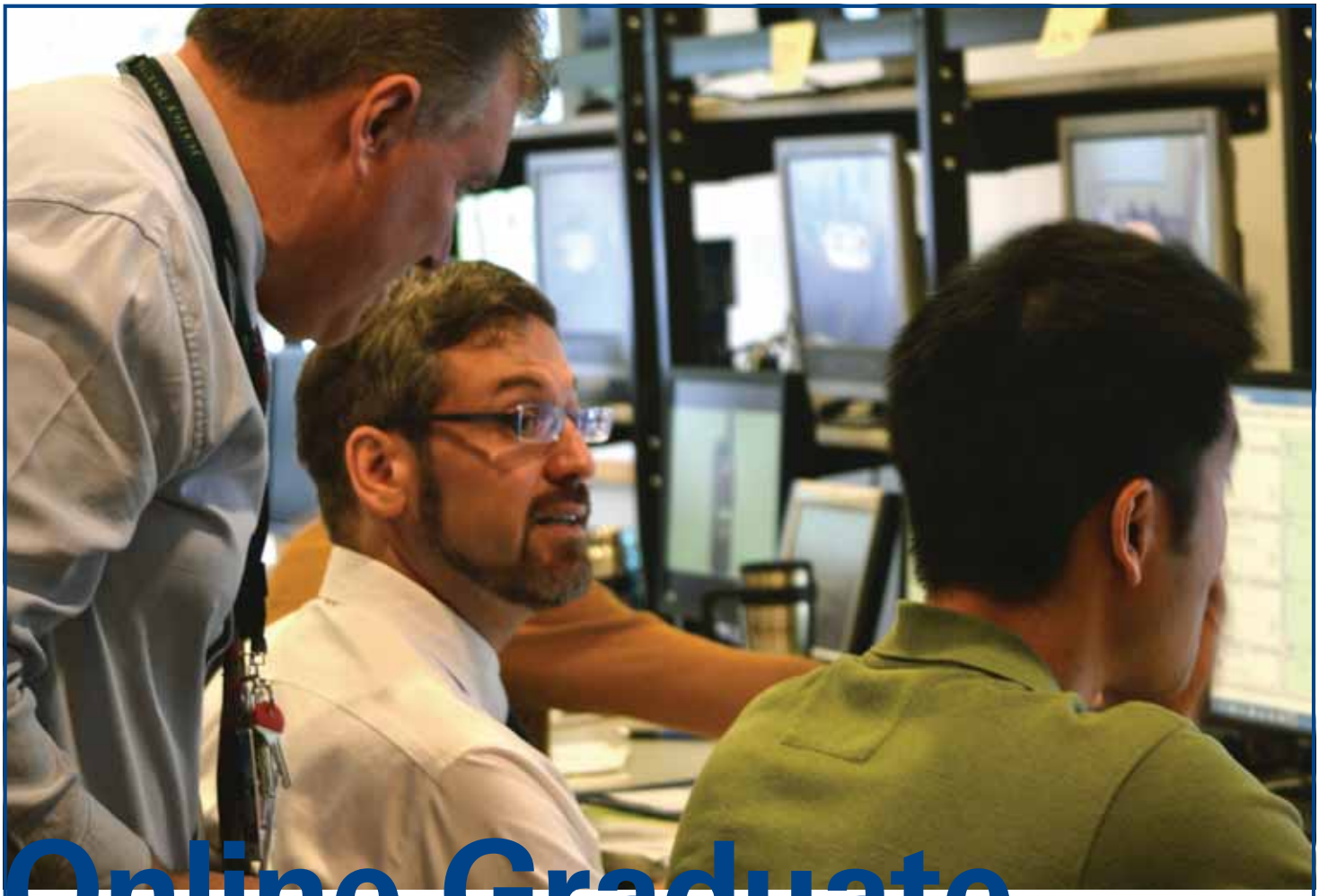

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