JUSTICE INSTITUTE of BRITISH COLUMBIA

IN SERVICE: 10-8

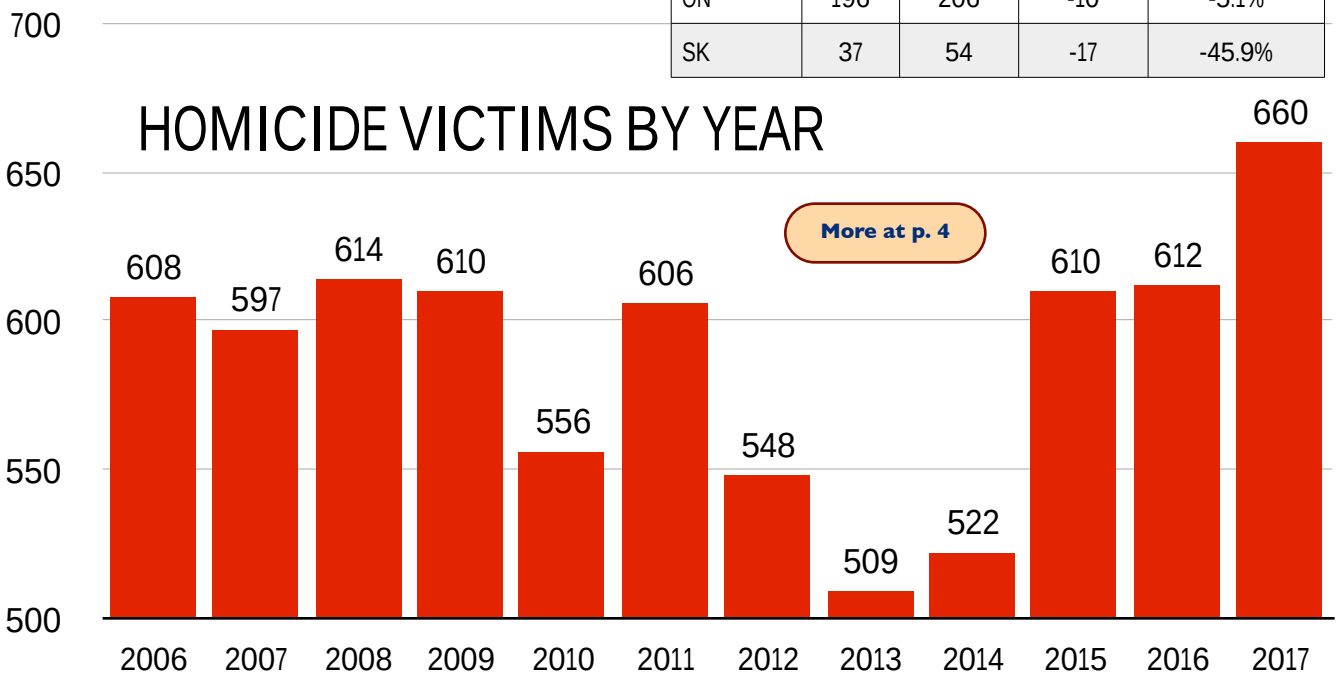
A PEER READ PUBLICATION

CANADA's HOMICIDE RATE RISES

In November, Statistics Canada released the homicide numbers for 2017. Statistics show that Canada hit its highest homicide rate in almost a decade. In 2017, police reported **660** homicide victims in Canada. This was an increase of **48** victims over 2016. The homicide rate per 100,000 population was **1.80**, up **7%** from 2016 and the highest rate since 2009.

The most substantial year-over-year increases occurred in BC (**+30**) and Quebec (**+26**). Saskatchewan (**-17**) and Ontario (**-10**) reported the largest declines.

PROVINCIAL HOMICIDE VICTIMS				
Province	2017	2016	+/-	% Change
BC	118	88	30	25.4%
QC	93	67	26	28.0%
NS	21	13	8	38.1%
MB	47	42	5	10.6%
NU	6	1	5	83.3%
YT	8	4	4	50.0%
AB	118	116	2	1.7%
PEI	0	0	0	0%
NB	10	11	-1	-10.0%
NWT	2	3	-1	-50.0%
NL	4	7	-3	-75.0%
ON	196	206	-10	-5.1%
SK	37	54	-17	-45.9%



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Highlights In This Issue

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Looking to refresh or develop your current skills? The JIBC's 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 2019

- ☑ **General Investigative Skills** @ Victoria Campus: January 14-18
- ☑ **Standard Field Sobriety Training** @ New West Campus: January 21-24 or January 28-31 or February 19-22
- ☑ **Search and Seizure** @ Victoria Campus: February 4-8
- ☑ **Critical Incident Manager** @ New West Campus: February 4-15
- ☑ **Drug Investigations** @ New West Campus: February 11-15
- ☑ **Search and Seizure** @ New West Campus: February 11-15

Advanced Police Training Contact Information

advancedpolicetraining@jibc.ca

604-528-5761

2019 Course Calendar here

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.

#Crime: social media, crime, and the criminal legal system.
Rebecca M. Hayes & Kate Luther.
Cham, SUI: Palgrave Macmillan, 2018.
HM 742 H42 2018

Can I see your hands!: a guide to situational awareness, personal risk management, resilience and security.
Dr. Gavriel (Gav) Schneider; foreword by Dave Grossman.
Irvine, CA: Universal Publishers, 2017.
HV 7431 S353 2017

Communicating across cultures.
Stella Ting-Toomey & Tenzin Dorjee.
New York, NY: The Guilford Press, 2018.
GN 345.6 T56 2018

Drug-impaired driving in Canada.
Nathan Baker.
Toronto, ON: Irwin Law, 2018.
KE 2114 B34 2018

Effective SMEs: a trainer's guide for helping subject matter experts facilitate learning.
Dale Ludwig & Greg Owen-Boger.
Alexandria, VA: ATD Press, 2018.
HF 5549.5 T7 L765 2018

Forensic human factors and ergonomics: case studies and analysis.
Michael S. Wogalter.
Boca Raton, FL: Taylor & Francis, 2018.
T 55 W64 2018

Handbook of personality disorders: theory, research, and treatment.
edited by W. John Livesley, Roseann Larstone.
New York, NY: The Guilford Press, 2018.
RC 554 H36 2018

Interpersonal and group dynamics: a practical guide to building an effective team.
Daisy-Mae Hamelinck & Bruce Bjorkquist.
Toronto, ON: Emond, 2019.
HM 716 B56 2019

Leadership team coaching in practice: case studies on developing high-performing teams.
Peter Hawkins.
New York, NY: Kogan Page Ltd, 2018.
HD 66 H386 2018

Risk and hazard management for festivals and events.
Peter Wynn-Moylan.
Abingdon, Oxon; New York, NY: Routledge, 2018.
GT 3935 W96 2018

Social media and crisis communication.
edited by Lucinda Austin & Yan Jin.
New York, NY: Routledge, 2018.
HM 742 S62 2018

Substance use disorders: a guide for the primary care provider.
H. Thomas Milhorn.
Cham, SUI: Springer, 2018.
RC 564 M55 2018

Training reinforcement: the 7 principles to create measurable behavior change and make learning stick.
Anthonie Wurth & Kees Wurth.
Hoboken, NJ: Wiley, 2018.
HF 5549.5 T7 W87 2018

Uncrossing the wires: a guide to effective communication between media and emergency services.
Sarah Edmonds & Brian Ward.
Toronto, ON: Thomson Reuters Canada, 2018.
HV 551.5 C2 E366 2018

Homicide Rates

The Census Metropolitan Area (CMA) of Thunder Bay, ON had the highest homicide rate of all CMAs at **5.80** homicides per 100,000 people. This was followed by Abbotsford-Mission, BC (**4.72**), Edmonton, AB (**3.40**), Brantford, ON (**3.36**) and Regina, SK (**3.15**). The average CMA homicide rate was **1.63** while Canada's overall rate was **1.80**.

HOMICIDE RATES - Select CMAs

CMA	Rate	Homicides
Thunder Bay, ON	5.80	7
Abbotsford-Mission, BC	4.72	9
Edmonton, AB	3.49	49
Brantford, ON	3.36	5
Regina, SK	3.15	8
Kelowna, BC	2.99	6
Winnipeg, MB	2.96	24
Barrie, ON	2.25	5
Calgary, AB	2.07	31
Vancouver, BC	2.02	52
All CMAs Total	1.63	422
All Non-CMA Total	2.20	238
Canada	1.80	660

Gang-Related Homicides

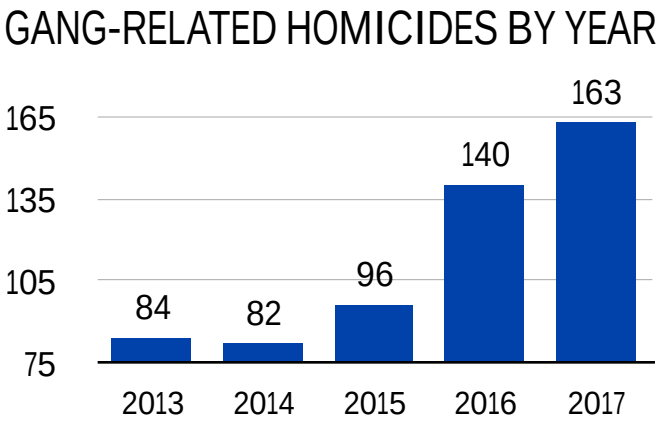
Gang-related homicides rose to **163** in 2017, accounting for **25%** of all homicides, up **23** from 2016. The largest increases of gang-related homicides occurred in BC (**+15**) and Alberta (**+12**). BC and Alberta numbers accounted for **47%** of all gang-related homicides.

BC had the highest proportion of gang-related homicides at **37.3%** of the province's total. New Brunswick followed at **30.0%**, Manitoba at **27.7%** and Alberta at **27.1%**.

US MURDER RATES- Select MSAs

MSA Metropolitan Statistical Area	Murder / Non-Negligent Manslaughter Rate
Baltimore-Columbia-Towson, MD	14.7
Las Vegas-Henderson-Paradise, NV	10.8
Chicago-Naperville-Elgin, IL-IN-WI	9.4
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	8.1
Atlanta-Sandy Springs-Roswell, GA	6.7
Houston-The Woodlands-Sugar Land, TX	6.4
Phoenix-Mesa-Scottsdale, AZ	5.7
Dallas-Fort Worth-Arlington, TX	5.2
Los Angeles-Long Beach-Anaheim, CA	4.8
Denver-Aurora-Lakewood, CO	4.6
Washington-Arlington-Alexandria, DC-VA-MD-WV	4.5
San Francisco-Oakland-Hayward, CA	4.2
Seattle-Tacoma-Bellevue, WA	3.0
New York-Newark-Jersey City, NY-NJ-PA	2.8
Boston-Cambridge-Newton, MA-NH	2.6
San Diego-Carlsbad, CA	2.4

Source: US data based on FBI UCR reporting [accessed December 21, 2018]
Rates per 100,000 inhabitants.



GANG-RELATED HOMICIDES BY PROVINCE/TERRITORY (2017)

Area	BC	AB	SK	MB	ON	QC	NS	NB	NL	PEI	YK	NWT	NU
Number	44	32	5	13	48	15	1	3	0	0	2	0	0
% of Homicides Gang-related	37.3	27.1	13.5	27.7	24.5	16.1	4.8	30.0	0	0	25.0	0	0

GANG-RELATED HOMICIDES by CMA

CMA	Gang-Related	% of Homicides
Abbotsford-Mission, BC	6	67%
Kelowna, BC	3	50%
Winnipeg, MB	11	46%
Thunder Bay, ON	3	43%
Toronto, ON	36	39%
Calgary, AB	12	39%
Vancouver, BC	19	37%
Montreal, QC	15	33%
Edmonton, AB	15	31%
Ottawa, ON	4	29%
Regina, SK	2	25%
Brantford, ON	1	20%
Oshawa, ON	1	20%
Victoria, BC	1	20%
Saskatoon, SK	1	20%
Hamilton, ON	1	9%
All CMAs Total	131	31%
Canada	163	25%

Firearm-Related Homicides

There were **266** firearm-related homicides reported in Canada in 2017, **43** more than in 2016. Firearm-related homicides have been increasing since 2014 with gang-related violence the primary driver. In 2017, **52%** of firearm-related homicides were gang related.

New Brunswick had the largest proportion of homicides committed with a firearm (**55.6%**) followed by BC (**53.3%**), Alberta (**45.1%**), Ontario (**44.0%**), and Nova Scotia (**40.0%**)

FIREARM-RELATED HOMICIDES BY TYPE

FIREARM TYPE	Number
Handgun	145
Rifle or Shotgun	62
Sawed-off Rifle or Shotgun	22
Fully Automatic Firearm	2
Other Firearm-Type Unknown	34
Firearm-like Weapon (such as nail guns, pellet guns, flare guns)	1
TOTAL	266

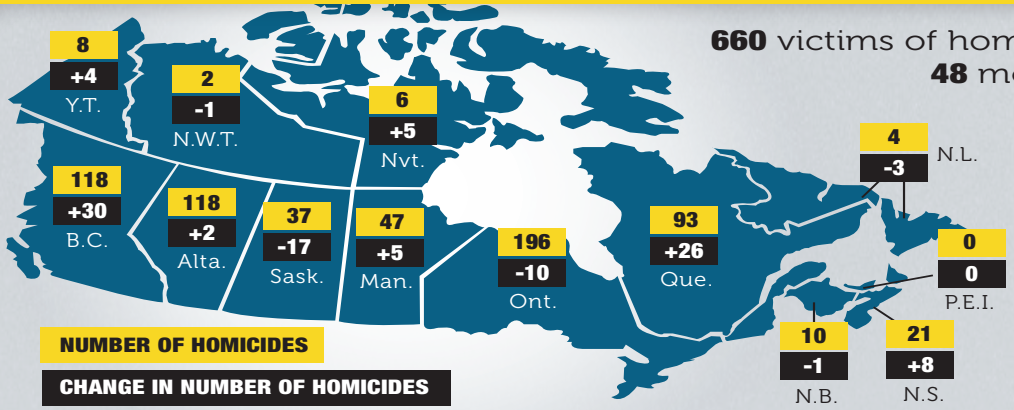
Other Methods of Death

Of the homicides in which a cause of death was identified in 2017, **41%** of homicide victims were shot, **31%** were stabbed, **17%** were beaten, and **4%** were strangled or suffocated. Other causes of death included shaken baby syndrome, fire (eg. smoke inhalation or burns) and by motor vehicle.

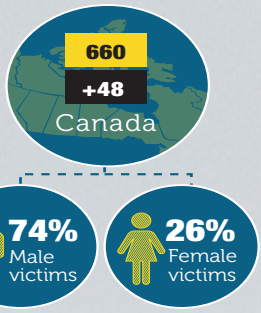
Source: Homicide in Canada, 2017. Juristat. Statistics Canada. Catalogue no. 85-002-X. https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54980-eng.htm [accessed December 21, 2018]

HOMICIDE IN CANADA 2017

www.statcan.gc.ca



660 victims of homicide in Canada, **48** more than in 2016.

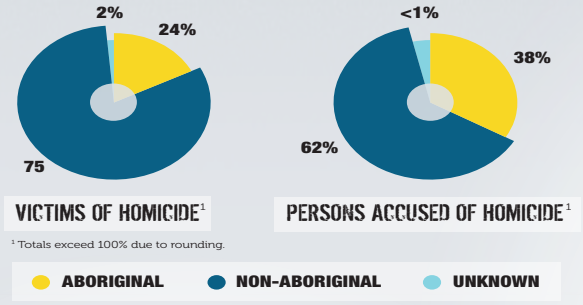


1 IN 4

HOMICIDES WERE GANG-RELATED.

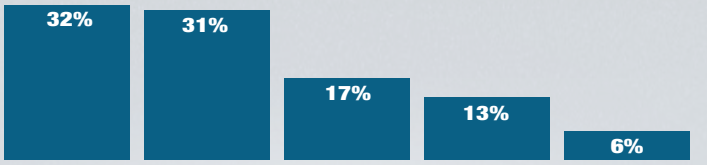
The **RATE** of gang-related homicides was **UP** for the **3RD YEAR IN A ROW**.

ABORIGINAL PEOPLE represented about 5% of Canada's total population in 2017 yet accounted for a **HIGHER PERCENTAGE** of homicide **VICTIMS** and **ACCUSED** persons.



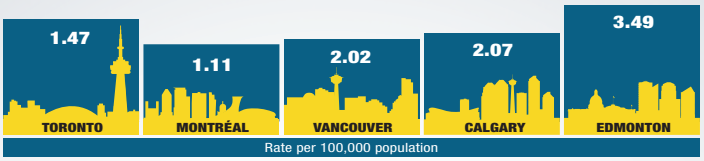
[1] Totals exceed 100% due to rounding.

4 out of 5 victims of solved homicides **KNEW THEIR KILLER.**[1]



[1] Figures do not add to 100% due to rounding.

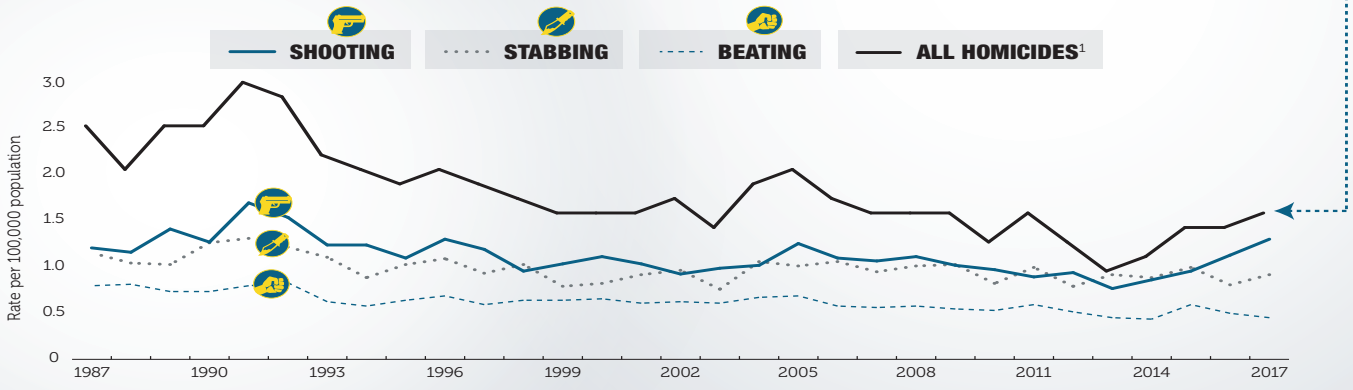
HOMICIDE RATES for Canada's **LARGEST CENSUS METROPOLITAN AREAS**:



The homicide rate in 2017 increased by **7%** from the previous year, reaching the **HIGHEST RATE SINCE 2009**.

There were **266 VICTIMS KILLED BY A FIREARM** in 2017, **43 MORE** than in 2016. This was the **4TH** consecutive increase in the number of firearm homicides and the **HIGHEST RATE SINCE 1992**.

HANDGUNS accounted for about **SIX IN TEN** firearm homicides.



[1] Includes homicides committed by methods other than shooting, stabbing or beating.

Source: Statistics Canada, Canadian Centre for Justice Statistics, Homicide Survey.

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ISBN number: 978-0-660-28451-4

CO-HABITANT CANNOT WAIVE PRIVACY INTEREST IN COMPUTER

R. v. Reeves, 2018 SCC 56

The accused shared a home with his common law spouse. They were joint titleholders and had lived with their two daughters in this home for 10 years. After being charged with a domestic assault, a no-contact order was issued which prohibited the accused from visiting the family home without his spouse's prior, written, and revocable consent. The spouse contacted the accused's probation officer to withdraw her consent and also reported that she and her sister had found what they believed to be child pornography on the home computer a year earlier.

Later that day, a police officer arrived at the family home without a warrant. The spouse allowed the officer to enter the home and she signed a consent form authorizing the officer to take the computer, which was owned and used by both spouses. It was located in the basement, a shared space in the home. The accused was not at the home but rather in custody on unrelated charges when the computer was taken by police.

The police detained the computer without a warrant for more than four months, but did not search it during this time. They failed to report the seizure of the computer to a justice, as required by s. 489.1 of the *Criminal Code,* and eventually obtained a warrant to search it. The police found 140 images and 22 videos of child pornography on the computer and the accused was charged with possessing and accessing child pornography.

Ontario Court of Justice

The officer testified that he sought the spouse's consent because he did not believe he had reasonable grounds to obtain a warrant to search the home and seize the computer. The judge found ***"the officer's entry into a private residence without the consent of both owners or occupants constituted a search of those premises for section 8 Charter purposes"***.

The judge concluded that the police breached the accused's s. 8 *Charter* rights. First, the warrantless search of the home and seizure of the home computer was unreasonable. The accused had a reasonable expectation of privacy in the home and the computer, and did not consent to police entering the home and removing the computer. Although the police obtained the spouse's consent to enter the home and remove the computer, a third party could not waive another's *Charter* rights. Second, the police failed to comply with the *Criminal Code* when they detained the computer for over four months without reporting its seizure to a justice. Third, the judge ruled the information to obtain (ITO) the search warrant was goal-oriented, misleading, unbalanced and unfair, and the search warrant should not have been granted. The computer evidence was excluded under s. 24(2) and the accused was acquitted.

Ontario Court of Appeal

The Court of Appeal did not agree with the trial judge that the police infringed s. 8 when they entered the home and took the computer with the consent of the spouse. Although one resident cannot waive the *Charter* rights of another, the Court of Appeal found that co-residency was relevant in assessing a claimant's expectation of privacy. Here, the accused's expectation of privacy in the shared spaces of the home and the computer was ***"greatly diminished"***. As a result, it was reasonable for the accused to expect that his common law spouse would be ***"able to consent to police entry into the common areas of the home or to the taking of the shared computer."***

And, although the Court of Appeal agreed that the continued detention of the computer and the subsequent computer search violated s. 8 of the *Charter*, the evidence should not have been excluded under s. 24(2). The Crown's appeal from the accused's acquittal was allowed, the exclusionary order was set aside, and a new trial was ordered.

Supreme Court of Canada

A majority of the Supreme Court agreed with the trial judge that the police breached the accused's s. 8 *Charter* rights when they took the computer from the home. Although the computer was shared, the accused maintained a reasonable expectation of privacy in it. And the common law spouse's consent did not nullify the accused's reasonable expectation of privacy, or operate to waive his *Charter* rights with respect to the computer.

s. 8 *Charter*-Unreasonable Search or Seizure

The seven member majority articulated a number of principles concerning s. 8 of the *Charter*:

- "In assessing whether s. 8 has been infringed, courts consider whether an individual's privacy interests must give way to the state's interest in law enforcement. The challenge of s. 8 is that courts are most often called on to interpret its scope in cases, like this, where the police have found evidence that the claimant has engaged in criminal activity. Child pornography offences are serious and insidious, and there is a strong public interest in investigating and prosecuting them. However, in applying s. 8, the question is not whether the claimant broke the law, but rather whether the police exceeded the limits of the state's authority." [para. 2]
- "The s. 8 analysis is geared towards determining 'whether in a particular situation the public's interest in being left alone by government must give way to the government's interest in intruding on the individual's privacy in order to advance its goals, notably those of law enforcement'." [para. 11]
- "Section 8 of the Charter is only engaged if the claimant has a reasonable expectation of privacy in the place or item that is inspected or taken by the state. To determine whether the claimant has a reasonable expectation of privacy, courts examine 'the totality of the circumstances'." [references omitted, para. 12]
- "The reasonable expectation of privacy standard is normative, rather than descriptive. The question is whether the privacy claim must 'be recognized as beyond state intrusion absent constitutional justification if Canadian society is to remain a free, democratic and open society'. Further, the inquiry must be framed in neutral terms — '[t]he analysis turns on the privacy of the area or the thing being searched and the impact of the search on its target, not the legal or illegal nature of the items sought'." [references omitted, para. 28]
- "There is a presumption that the taking of an item by the police without a warrant violates s. 8 of the Charter unless the claimant has no reasonable expectation of privacy in the item or has waived his Charter rights." [para. 27]
- "'[T]he essence of a seizure under s. 8 is the taking of a thing from a person by a public authority without that person's consent'. In contrast, valid consent acts as a waiver of the claimant's s. 8 rights. In such cases, there is no search or seizure within the meaning of the Charter, even though the claimant would ordinarily enjoy a reasonable expectation of privacy in the thing the police have taken or inspected." [references omitted, para. 13]
- "If s. 8 of the Charter is engaged, 'the court must then determine whether the search or seizure was reasonable'. A warrantless search or seizure is presumptively unreasonable, and the Crown bears the burden of rebutting this presumption). A search or seizure is reasonable 'if it is authorized by law, if the law itself is reasonable and if the manner in which the search [or seizure] was carried out is reasonable'." [references omitted, para. 14]
- "[B]ecause someone is always likely to have a reasonable expectation of privacy in a personal computer, the taking of a personal computer without a warrant and without valid consent will constitute a presumptively unreasonable seizure." [para. 56]

"In assessing whether s. 8 has been infringed, courts consider whether an individual's privacy interests must give way to the state's interest in law enforcement."

Personal Computers

In recognizing the special privacy concerns that arise with the seizure and search of a computer, the majority stated:

> Personal computers contain highly private information. Indeed, "[c]omputers often contain our most intimate correspondence. They contain the details of our financial, medical, and personal situations. They even reveal our specific interests, likes, and propensities". Computers act as portals — providing access to information stored in many different locations. They "contain information that is automatically generated, often unbeknownst to the user". They retain information that the user may think has been deleted. [references omitted, para. 34]

And further:

> … [S]pecific, prior judicial authorization is required to search a computer … . The unique and heightened privacy interests in personal computer data clearly warrant strong protection, such that specific, prior judicial authorization is presumptively required to seize a personal computer from a home. This presumptive rule fosters respect for the underlying purpose of s. 8 of the Charter by encouraging the police to seek lawful authority, more accurately accords with the expectations of privacy Canadians attach to their use of personal home computers and encourages more predictable policing. [references omitted, para. 35]

In this case, the accused had a reasonable expectation of privacy in the shared computer. In deciding so, on the basis of the ***"the totality of the circumstances"***, the majority considered ***"(1) the subject matter of the alleged seizure; (2) whether the claimant had a direct interest in the subject matter; (3) whether the claimant had a subjective expectation of privacy in the subject matter; and (4) whether this subjective expectation of privacy was objectively reasonable."***

The majority found the police were after more than just the physical computer itself, but rather sought to preserve and permit access to the data it contained. In seizing the computer, the police deprived the accused control over this highly private information, including the opportunity to delete it:

> Here, the subject matter of the seizure was the computer, and ultimately the data it contained about [the accused's] usage, including the files he accessed, saved and deleted. I acknowledge that the police could not actually search the data until they obtained a warrant. Nevertheless, while the privacy interests engaged by a seizure may be different from those engaged by a search, [the accused's] informational privacy interests in the computer data were still implicated by the seizure of the computer. When police seize a computer, they not only deprive individuals of control over intimate data in which they have a reasonable expectation of privacy, they also ensure that such data remains preserved and thus subject to potential future state inspection.
>
> […]
>
> [The accused] undoubtedly had a direct interest and subjective expectation of privacy in the home computer and the data it contained. He used the computer and stored personal data on it. The computer was password-protected. The threshold for establishing a subjective expectation of privacy is low.
>
> The final question is whether [the accused's] subjective expectation of privacy was objectively reasonable. Section 8 seeks to protect "a biographical core of personal information which individuals in a free and democratic society would wish to maintain and control from dissemination to the state".

"The unique and heightened privacy interests in personal computer data clearly warrant strong protection, such that specific, prior judicial authorization is presumptively required to seize a personal computer from a home."

"Although a seizure of a computer may be less intrusive than a search of its contents, both engage important privacy interests when the purpose of the seizure is to gain access to the data on the computer."

> Although a seizure of a computer may be less intrusive than a search of its contents, both engage important privacy interests when the purpose of the seizure is to gain access to the data on the computer. Privacy includes "control over, access to and use of information". Thus, the personal or confidential nature of the data that is preserved and potentially available to police through the seizure of the computer is relevant in determining whether the claimant has a reasonable expectation of privacy in it. [references omitted, paras. 30-33]

Finally, joint ownership and shared control over the computer was not determinative of whether the accused's subjective expectation of privacy was objectively reasonable. ***"Shared control does not mean no control,"*** said Justice Karakatsanis. ***"By choosing to share a computer with others, people do not relinquish their right to be protected from the unreasonable seizure of it."*** Furthermore, any lack of control over the personal computer by the accused was not voluntary. He was in custody when the computer was seized and restrained from accessing the house by court order.

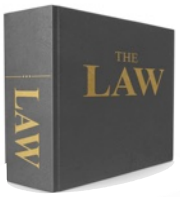
Warrantless Entry to the Shared Home

The majority refused to determine whether the police infringed the accused's rights when they entered the shared home without a warrant. During his oral submissions, the accused submitted that the police entry into his home was lawful and did not breach the *Charter*. As a result of this concession, the majority found it was not necessary to decide whether the entry into the home constituted a discreet violation of the accused's rights. Since the lawfulness of the computer's seizure could be assessed without determining the legality of the police entry, the majority proceeded on the assumption that the entry was lawful. Moreover, the majority wanted to wait until a later day where the issue had been fully argued before exploring whether police entry into a shared home on the consent of one resident violated the *Charter*. ***"The issue of whether police entry into a shared home with the consent of one resident violates the Charter raises complex questions that require a considered response,"*** said Justice Karakatsanis speaking for the majority. ***"They are best answered in a case that directly turns on this issue, with the benefit of full submissions."***

"Shared control does not mean no control. By choosing to share a computer with others, people do not relinquish their right to be protected from the unreasonable seizure of it."

Warrantless Taking of the Shared Computer

I. Criminal Code



Because the officer testified he did not have reasonable grounds to seize the computer, he could not seize it without a warrant under the *Criminal Code*. The majority stated:

> Even if the officer had lawfully been in the home, this would not make the seizure of the computer lawful. Section 489(2) of the Criminal Code provides that a police officer "who is lawfully present in a place pursuant to a warrant or otherwise in the execution of duties may, without a warrant, seize any thing that the officer believes on reasonable grounds" was used in the commission of an offence or would afford evidence of an offence. Here, however, this section was not available; the officer testified that he asked for [the spouse's] consent to seize the computer because he did not believe he had grounds to obtain a warrant. Irrespective of whether the officer was "lawfully present" in the home, by his own admission, he did not have "reasonable grounds" to seize the computer. [para. 21]

"We are not required to accept that our friends and family can unilaterally authorize police to take things that we share. The decision to share with others does not come at such a high price in a free and democratic society."

II. Consent

The majority also rejected the Crown's contention that the accused's spouse, having an equal and overlapping privacy interest in the computer, could consent to its removal and therefore its taking did not amount to a "seizure" under the *Charter*. Instead, the accused had a reasonable expectation of privacy in the computer when it was taken by the police and the accused's spouse could not waive his *Charter* rights in it. Although it is reasonable to expect a person may bear the risk that a co-user of a shared computer may access data on it and even discuss the data with police, it is not reasonable that the person would expect the co-user could consent to the police taking the computer:

> The consent of [the accused's] spouse cannot nullify a reasonable expectation of privacy that he would otherwise have in the shared computer. Admittedly, when we share a computer with other people, we take the risk that they will access information we hoped to keep private. They may wish to share the information they find with others, including the police. But … the reasonable expectation of privacy standard is normative, not descriptive. The question is not which risks the claimant has taken, but which risks should be imposed on him in a free and democratic society. [para. 41]

And further:

> I cannot accept that, by choosing to share our computers with friends and family, we are required to give up our Charter protection from state interference in our private lives. We are not required to accept that our friends and family can unilaterally authorize police to take things that we share. The decision to share with others does not come at such a high price in a free and democratic society. … [S]uch an approach to s. 8 may also disproportionately impact the privacy rights of low income individuals, who may be more likely to share a home computer. [para. 44]

The accused's spouse was free to notify the police about what she saw on the computer, but her consent for the police to take the computer could not extinguish his reasonable expectation of privacy in it. Nor could the accused's spouse waive his *Charter* rights by giving her consent. ***"While [the accused's spouse] undoubtedly has constitutionally-protected privacy interests in the shared computer, this does not entitle her to relinquish [the accused's] constitutional right to be left alone,"*** said Justice Karakatsanis. ***"Waiver by one rights holder does not constitute waiver for all rights holders."*** Since the accused had a reasonable expectation of privacy in the shared computer and his rights had not been waived, its warrantless seizure was presumptively unreasonable and the Crown offered no other common law or statutory basis for its taking.

Detaining the Computer and Searching It

The Crown conceded that the police breached the accused's *Charter* when they detained the computer and subsequently searched it.

s. 24(2) Admissibility

Despite society's strong interest in the adjudication of this case on its merits given the evidence was reliable and important to the Crown's case in prosecuting serious and insidious child pornography offences, the majority agreed with the trial judge that the evidence ought to have been excluded. First, the Charter-infringing police conduct was serious. The police should have known better. "***With respect to the seizure of the shared computer, while the officer believed that [the accused's spouse's] consent allowed him to take it, the police service had a specialized cyber-crime unit that should have been aware of the unique and heightened privacy interests in computers,"*** said the majority. ***"The***

unit also should have known that a third party cannot waive another party's Charter rights." The police could also not explain why they had detained the computer for months without complying with the *Criminal Code* reporting requirements. There were also problems with the ITO upon which the search warrant was obtained. Second, the police conduct had a serious impact on the accused's *Charter*-protected interests. The search and seizure of a personal computer is very intrusive given the extremely private nature of the data that a personal computer may contain.

The accused's appeal was allowed, the judgement of the Court of Appeal in ordering a new trial was set aside, the evidence obtained from the seizure and subsequent search of the accused's computer was excluded, and the acquittal entered at trial was restored.

A Helping Hand?

Justice Moldaver, writing a separate opinion, substantially agreed with the majority's analysis and conclusion that the evidence should be excluded and the acquittal restored. However, unlike the majority he addressed the legality of police entry into the shared residence by offering "a possible basis" for entry under the common law ancillary powers doctrine. Accepting that the police entry into the common areas of the home infringed upon the accused's reasonable expectation of privacy and therefore amounted to a "search" under s. 8, Justice Moldaver explained that the common law ancillary powers doctrine could potentially authorize the entry. The ancillary powers doctrine examines (1) whether the police conduct at issue fell within the general scope of their statutory or common law duties and (2) whether the conduct involved a justifiable use of police powers associated with that duty.

"[T]here can be no doubt that entering into a shared residence when invited to take a witness statement in connection with a criminal investigation falls within the scope of police duties," said Justice Moldaver. ***"Investigating crime is a primary police function. Police officers in Ontario are statutorily duty-bound to encourage crime prevention within the community, apprehend criminals, and assist victims of crime: Entering a home to take a witness statement in connection with a criminal investigation furthers all three of these mandates."*** As for whether such entry was justifiable, Justice Moldaver found it could be, provided police abide by the following five constraints designed to minimize police interference into a persons expectation of privacy:

> (1) The police must offer the authorizing resident, and any other cooperating occupants, a suitable alternative interview location — if one is available — that does not potentially intrude upon the reasonable expectations of privacy of co-residents in their home.
>
> (2) The purpose of the entry must be limited to taking a statement, or statements, from the authorizing resident, or one or more willing occupants, in connection with a criminal investigation. The police may not go further and search for or seize evidence unless they obtain the necessary grounds to do so in the course of taking the statement or statements.
>
> (3) The police are only permitted to enter the home's common areas into which they have been invited.
>
> (4) The police can only enter if invited in by a resident with the authority to consent and that consent must be voluntary, informed and continuous.
>
> (5) Unless the police obtain the necessary grounds to take further investigative action, the duration of the entry must be limited to taking a statement, or statements, from the authorizing resident, or one or more willing occupants. [para. 96]

Despite proposing this power of entry, Justice Moldaver cautioned that it was merely "tentative" and he was only assuming it would be constitutional. None of the other judges offered an opinion on his proposal and Justice Moldaver said that ***"any final determination of whether police may lawfully enter a joint residence when invited by one of the occupants must be left for another day."***

Yet Another View

Justice Côté, unlike his colleagues, concluded that the police could both (1) lawfully enter common areas of a shared home with the consent of one cohabitant (and did not require the unanimous consent of all persons who live in that home) and (2) could lawfully seize a jointly-owned computer (i.e., physically remove the computer, without searching its contents) when that computer is located in a common area of a shared home and one of the computer's co-owners provides their consent.

"In my view, one cohabitant can validly consent to a police entry into common areas of a shared residence, obviating the need for a warrant," said Justice Côté. ***"The alternative rule — that the police may enter the common areas of a shared home only if they obtain consent from each and every person who lives there — is entirely unworkable. It also has no basis in our existing s. 8 jurisprudence as it pertains to physical spaces."*** He continued:

> [I]t is not objectively reasonable for a cohabitant, who shares a residence with others, to expect to be able to veto another cohabitant's decision to allow the police to enter any areas of that home that they share equally. Although [the accused] did have an expectation of privacy in those areas, that expectation was attenuated and limited by the reality of cohabitation. Other persons with overlapping privacy interests in and rights to common spaces can validly permit third parties to enter those spaces. This includes the police. To hold otherwise would be to interfere with the consenting cohabitant's liberty and autonomy interests with respect to those spaces. Thus, I would reject the argument that the entry was invalid because [the accused's spouse] could not waive [the accused's] Charter rights. That is beside the point. Properly understood, [the accused's spouse] did not waive anyone's rights except her own. But in the context of a shared home, [the accused's] reasonable expectation of privacy was not sufficiently capacious to afford constitutional protection against a cohabitant's decision to give the police access to common areas. This is especially true on the facts of this case, where [the accused] had no legal right to be in the home at the time of the police entry because [the accused's spouse] had revoked her permission for him to enter it earlier that day pursuant to the no-contact order. The analysis is of course different concerning private areas of a shared residence, such as an individual's exclusive bedroom or office — types of spaces that are not involved in this case. [para. 112]

And further:

> The effect of [the accuse's] position — that the police must obtain the unanimous consent of all cohabitants before entering common areas — is unworkable and would substantially undermine effective law enforcement. It would require the police to identify, locate and obtain the consent of every person who lives in the home, or has any expectation of privacy with respect to common areas of the home, no matter how onerous that task might be. This would effectively negate all investigative advantages of entering on the basis of consent. In some cases, it would tip off potential suspects to an investigation. In others, it would likely render consent entries too burdensome or impractical. The police would be forced to obtain a warrant, rather than entering on the basis of consent, in all but the most straightforward of circumstances, creating additional procedural burdens. The rule might also result in entries or searches that are more extensive (and therefore more invasive of privacy interests) than consent searches, which must be limited in accordance with the scope of the consent. And, of course, warrants require a sufficient evidentiary basis. In some instances, a suspect who cohabitates with others may wish to consent to a police entry or a search, even where a warrant could not otherwise be obtained, in order to quickly dispel suspicion or for other reasons. But under [the accused's] proposed approach, any other cohabitant could veto that suspect's ability to do so. In fact, a cohabitant could even be precluded from permitting the police to search his or her own bedroom — one that is completely private and not shared with others — if accessing that bedroom would require entering shared areas of the home. [para. 114]

Any consent, though, must be:

1. informed and voluntary;
2. given by a person having the authority to consent; and
3. limited to shared places or things. Further, the police must respect the limits of the consent, which can be revoked at any time.

As for the taking of the computer, Justice Côté stated:

> If instead of what happened here, [the accused's spouse] had physically taken the computer to a police station and turned it over, surely the police would not have been prohibited from accepting it. There is no coherent way to distinguish that scenario, on constitutional grounds, from a situation where the police request consent to physically remove jointly owned property and that consent is subsequently provided. Regardless, it is important to be precise about the privacy interests that are implicated by a seizure of a computer as opposed to a search of its contents. Much of the majority's analysis focuses on informational privacy concerns that simply do not arise when the police physically remove an electronic device from a home without searching its contents. [para. 106]

Despite finding the entry into the home and the seizure of the computer to be lawful, Justice Côté would nevertheless also exclude the evidence on the basis of the police failure to comply with the *Criminal Code* reporting requirements, the improper detention of the computer and the search warrant's invalidity.

Complete case available at www.scc-csc.ca

Note-able Quote

"Character cannot be developed in ease and quiet. Only through experience of trial and suffering can the soul be strengthened, vision cleared, ambition inspired and success achieved."

Helen Keller

INVESTIGATIVE DETENTION MUST BE 'BRIEF': 80 MINUTE DETENTION ARBITRARY

R. v. Barclay, 2018 ONCA 114

Police received a tip from a confidential informer that a VIA train passenger was bound for Washago, ON from Vancouver, BC. He was ticketed under the accused's name and had two large black suitcases from which the informer said he could smell an odour of marijuana. The informer described the passenger as a bearded man around 35 years old, 5'10", 175 pounds, and wearing a beige "Duck Dynasty" cap. The informer added that the passenger "was supposed to be getting off at Washago but is now getting off at Parry Sound, Ontario."

Acting on the tip, the police placed the accused (who closely matched the description provided by the confidential informer) under investigative detention as he disembarked from the train in Parry Sound with two large black suitcases. Police suspected, based on the tip, that the suitcases contained marijuana, but they smelled nothing. The police did not believe they had grounds to arrest the accused. After reading the accused his rights and allowing him to make telephone calls from the police car, a drug-sniffing dog was summoned. The nearest dog was 90 km away. While they waited for the dog to arrive, the police took the accused and his luggage to the police station so he could use a washroom and access a landline telephone.

"[T]he requirement that an investigative detention be 'brief' nonetheless connotes a temporal limitation and not a period that can be extended for as long as necessary to further an otherwise appropriate, diligent, and legitimate investigation of the particular crime to which the individual is suspected of being connected."

CHRONOLOGY	
7:33 am	Police receive a tip from a confidential informer
7:40 am	The confidential informer's tip was relayed to the police in Parry Sound.
8:50 am	VIA train expected to arrive in Parry Sound
9:14 am	VIA train arrived in Parry Sound. The accused disembarked from the train. After verifying his name, the police detained him, cautioned him, and advised him of his right to counsel.
9:27 am	The police performed a frisk search of the accused "for police safety" before putting him in the police vehicle. The accused was in the police vehicle, sheltered from the light rain and wind, making an initial telephone call on his cell phone. The police put the accused's luggage in the trunk of their vehicle and left the trunk lid open. Two more police officers arrived. None of the officers detected an odour of marijuana coming from the bags, even when one of the officers placed his face close to the bags.
9:37 am	The accused concluded his initial call.
9:40 am	The police requested the closest drug-sniffer dog. They expected that it would take 30-45 minutes for the dog to arrive.
9:57 am	The police took the accused to the detachment so that he could use the washroom and call his counsel from the detachment's landline.
10:00 am	The police and accused arrived at the detachment and police placed the accused's luggage in a small room.
10:06 am	The accused was on the phone with counsel. He was not "locked up" at the detachment, but he was not free to leave. He waited in an interview room.
10:58 am	The sniffer dog arrived and the police moved the accused's luggage to the larger garage area.
11:02 am	The dog sniffed the accused's luggage and indicated that one suitcase and the accused's duffle bag had an odour of drugs. The accused was arrested and the police searched the contents of the accused's luggage.

Source: R. v. Barclay, 2016 ONSC 2811

The dog arrived about 105 minutes after the police first detained the accused. The dog made a "positive hit" on one of the suitcases and the accused's duffle bag. The police arrested him and found 33 pounds of marijuana in his luggage with a street value of between $174,000 and $350,000.

Ontario Superior Court of Justice

The judge concluded that the length of time that the accused was detained pending the deployment of the dog was reasonable in the circumstances. ***"Canada is a large country comprised of many small towns which are spread out over great distances,"*** he said. ***"It is not feasible for each of the detachments in these small towns to maintain their own sniffer dogs, and in the circumstances a delay of a little less than 2 hours was not unreasonable."*** The accused was convicted of possessing marihuana for the purpose of trafficking and breach of probation. He was sentenced to 12 months imprisonment.

Ontario Court of Appeal

The accused argued that his lengthy investigative detention, along with his luggage, fell outside the permissible scope of the common law police power of investigative detention. Although the accused conceded that the police were entitled to initially detain him and his luggage for investigative purposes based on the tip, he submitted that the resulting 105 minute detention was simply too long.

The Court of Appeal agreed and found the police, based only on a suspicion, were not entitled to detain the accused and his luggage for the time they did until the arrival of a drug sniffing dog. Thus, the detention of the accused and his luggage was arbitrary and violated s. 9 of the *Charter*.

"The word 'brief' is descriptive and not quantitative. It describes a range of time and not a precise time limit. The range, however, has temporal limits and cannot expand indefinitely to accommodate any length of time required by the police to reasonably and expeditiously carry out a police investigation."

Prolonged Detention

Under s. 9 of the *Charter*, everyone has the right not to be arbitrarily detained. A detention will not be arbitrary if it is lawful. Under the common law, the police may detain a person for investigation ***"if there are reasonable grounds to suspect in all the circumstances that the individual is connected to a particular crime and that such detention is necessary."*** The investigative detention, however, must be **"brief in duration"** and conducted in a reasonable manner. ***"If the police conduct in detaining the [accused] amounted to a lawful exercise of their common law powers, then the investigative detention was not arbitrary, and did not violate the suspect's right under s. 9 of the Charter,"*** said Associate Chief Justice Hoy. ***"On the other hand, if the police conduct fell outside the scope of these powers, it constituted an infringement of the [accused's] right under s. 9 not to be arbitrarily detained."***

The Appeal Court rejected the Crown's contention that the common law empowers police to detain an individual for as long as reasonably necessary to further the investigation of the particular crime to which the individual is suspected of being connected:

> [T]here is no bright line temporal rule in determining whether an investigative detention involved an unjustifiable use of police powers and, as a result, is arbitrary. However, the requirement that an investigative detention be "brief" nonetheless connotes a temporal limitation and not a period that can be extended for as long as necessary to further an otherwise appropriate, diligent, and legitimate investigation of the particular crime to which the individual is suspected of being connected. It follows that the permitted duration of an investigative detention is not defined by the time reasonably required to deploy a sniffer dog, even if the police treatment of the suspect is otherwise exemplary during the period of detention.
>
> The permitted duration of an investigative detention is determined by considering whether the interference with the suspect's liberty interest by his continuing detention was more intrusive than was reasonably necessary to perform the officer's duty, having particular regard to the seriousness of the risk to public or individual safety.
>
> But all investigative detentions must be "brief" because the state interference with the individual's liberty rests on a reasonable suspicion of criminal activity, a much lower standard than the reasonable and probable grounds needed for an arrest. The relatively low "reasonable suspicion" standard cannot constitutionally sustain a detention that is not "brief".
>
> The purpose of the brief detention contemplated under the investigative detention power is to allow the police to take investigative steps that are readily at hand to confirm their suspicion and arrest the suspect

"The purpose of the brief detention contemplated under the investigative detention power is to allow the police to take investigative steps that are readily at hand to confirm their suspicion and arrest the suspect or, if the suspicion is not confirmed, release the suspect."

"If there are other reasonable means of continuing the investigation without detaining the suspect, the continued detention of the suspect would likely render continued detention unconstitutional."

or, if the suspicion is not confirmed, release the suspect.

The word "brief" is descriptive and not quantitative. It describes a range of time and not a precise time limit. The range, however, has temporal limits and cannot expand indefinitely to accommodate any length of time required by the police to reasonably and expeditiously carry out a police investigation.

The permitted duration of an investigative detention is case-specific. Some of the relevant factors include:

- ***the intrusiveness of the detention.*** For example, handcuffing the suspect behind his or her back and placing the suspect in a police cruiser, or diverting the suspect from his intended path by taking him to the police detachment to continue the investigation, will generally be more intrusive of the suspect's liberty interest than asking him questions at the point of initial detention. The more intrusive the detention is to the suspect's liberty interest, the more closely its duration will be scrutinized.
- ***the nature of the suspected criminal offence.*** If the suspected offense is not serious, the permitted duration will probably be at the shorter end of "brief".
- ***the complexity of the investigation.*** If the investigation is not complex, one would expect that police questioning of the suspect would not reasonably need to be lengthy, and the permitted duration will probably be at the shorter end of "brief". However, if the investigation of the suspected criminal offence is complex, its complexity will only justify a longer permitted duration within the range of "brief" to the extent it is causally linked to the duration of the detention.
- ***any immediate public or individual safety concerns.*** Immediate public or individual safety concerns may justify a permitted duration at the longer end of "brief".
- ***the ability of the police to effectively carry out the investigation without continuing the detention of the suspect.*** If there are other reasonable means of continuing the investigation without detaining the suspect, the continued detention of the suspect would likely render continued detention unconstitutional.
- ***the lack of police diligence.*** For example, if a sniffer dog were immediately available, and yet the police detained the suspect for 20 minutes before employing the dog to confirm or refute their suspicion, then, depending on all of the other relevant factors, the interference with the suspect's liberty interest as a result of the lack of police diligence might render the delay unconstitutional.
- ***the lack of immediate availability of the required investigative tools.*** On the other hand, depending on all of the other relevant factors, if a sniffer dog were made available as soon as practicable and employed as soon as available, the same 20-minute detention might fall within the range of time that can be characterized as a "brief" detention.

The relative importance of these and other relevant factors, and thus the permissible length of an investigative detention, will vary from case to case. But it is crucial to remember that such factors merely situate the permitted duration of the detention within the range of what is "brief", and that all investigative detentions must be "brief". [references omitted, paras. 26-32]

In this case, the Appeal Court concluded that the lawful investigative detention of the accused and his luggage had ended by no later than 9:40 a.m. ***"By that time, the police had completed their investigation at the VIA station,"*** said Associate Chief Justice Hoy. ***"Their investigation had yielded***

"Immediate public or individual safety concerns may justify a permitted duration at the longer end of 'brief'."

nothing: four police officers had been unable to detect any odour of marijuana emanating from the [accused's] luggage and they believed that it would take 35-40 minutes for a sniffer dog to arrive." He continued:

> The further interference with the [accused's] liberty interest by his continued detention while police awaited the arrival of the drug-sniffer dog was more intrusive than was reasonably necessary to address the seriousness of the risk to public or individual safety and to perform the police duty, given the nature of the offence. The police suspected that the [accused] had marijuana in his luggage. The investigation was not complex and, in this situation, the risk to public or individual safety was low. If the police had wanted to continue investigating the [accused], they knew where he lived and, in the circumstances, had numerous avenues they could have pursued without interfering with his liberty.

Arrest?

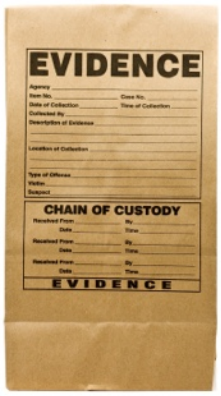
The Crown contended the police objectively had the reasonable grounds necessary to arrest the accused and search his luggage when he disembarked from the train with the two suitcases based on the "totality of the circumstances", including the confidential informer's tip. In the Crown's view, the police were entitled to arrest the accused and therefore "brief" could be interpreted liberally.

The Court of Appeal rejected this submission as well. In order to justify an arrest without warrant, the police require reasonable grounds, both subjectively and objectively. Here, however, the police did not subjectively think they had reasonable grounds to arrest the accused based solely on the confidential informer's tip. Thus, the police were not entitled to arrest him, and there was no basis to interpret "brief" in the broad manner that the Crown proposed.

Further, the Appeal Court did not agree that the objective grounds for arrest were met:

> Although the confidential informant suspected criminal activity, the confidential informant had no inside information. The [accused's] tip was not that the suitcases contained marijuana. The confidential informant gave only one reason for suspecting the [accused] of criminal activity, namely that the [accused's] suitcases had the odour of marijuana. The sense of smell is highly subjective. There was no indication that the confidential informant had special, or even reliable, olfactory powers or special training or experience in detecting the odour of marijuana. While information from this confidential informant had led to the arrest and subsequent conviction of another individual for possession of marijuana, there was is no evidence that this information was based on the confidential informant's ability to smell marijuana. In all of the circumstances, the tip was not sufficiently compelling to provide reasonable and probable grounds to arrest the [accused]. Although the police had reasonable grounds to suspect that the [accused] had marijuana in his luggage when they detained him, objectively, they did not have reasonable and probable grounds to believe that he had committed an offence. [reference omitted, para. 36]

Evidence Admissibility



Although the accused's right against arbitrary detention had been violated, the evidence was nonetheless admitted. First, the seriousness of the police conduct that led to the breach was at the low end of the spectrum. The *Charter* breach was not wilful or reckless. Moreover, other than exceeding the permissible duration of the detention, the police respected the accused's rights during his detention. Second, although the length of detention had a reasonably serious impact on the accused's *Charter*-protected rights (detained

about 80 minutes longer than was permissible), he was not "locked up" and the dog sniff search, in and of itself, was minimally invasive. Finally, the drug evidence was both reliable and critical to the charge, and the offence was moderately serious. Society had an interest in an adjudication of the case on its merits.

Complete case available at www.ontariocourts.on.ca

Editor's note: Additional facts taken from *R. v. Barclay*, 2016 ONSC 2811.

NO s. 10(b) BREACH IN UN-ELICITED & SPONTANEOUS INCRIMINATING STATEMENT

R. v. Miller, 2018 ONCA 942

The accused, who operated a motorcycle business, returned to Canada from the United States driving a truck that was carrying several motorcycles. After a sniffer dog detected the presence of drugs in the truck, Canada Border Services Agency (CBSA) officers detained the accused and his passenger on suspicion of smuggling. He was handcuffed, informally cautioned and advised of his right to counsel. He stated that he did not wish to speak to counsel. Within several minutes of his detention, a CBSA officer took the accused into a search room, removed his handcuffs and formally read him his rights from a prepared card. When asked if he wished to speak to a lawyer the accused again answered no.

The CBSA officers then conducted a thorough search of the truck and located 105 bricks of cocaine weighing a total of 100 kg. One of the agents then advised the accused that he was under arrest for smuggling. He was again read the standard caution and advice regarding his right to counsel, but the accused began to speak. The CBSA officer stopped him and told him to wait until he was properly advised of his rights. When advised of his right to counsel, the accused responded that he would like to contact a lawyer.

The CBSA officer then completed reading the caution and, immediately after doing so, the accused began to speak without being prompted or questioned. The accused said there were "100 keys of coke" in the bed of the truck. He also asked to retrieve a cell phone from the truck so that he could send a coded message. He also wanted his wallet so he could get his lawyer's phone number. The accused indicated that there could be a safety issue with his family and that he wished to cooperate with the investigation and provide the authorities with information. He also asked that the truck be moved so that it could not be seen and offered to complete the delivery so the officers could identify who received the drugs. He told the officers that he had brought this shipment because of a business downturn. The officers asked questions to clarify what the accused was saying. Some 52 minutes elapsed after he made his statement but before he was afforded an opportunity to speak to counsel. Part of this time was taken to facilitate smoking and toilet breaks for the accused.

Ontario Superior Court of Justice

The judge found that the accused ***"was repeatedly given his rights to counsel and appropriately cautioned as his jeopardy changed"***. Furthermore, when the accused interrupted the CBSA officers as they read him his rights, ***"he was not diligent in pursuing speaking with counsel".*** Rather, he was more concerned with his own safety, the movement

"[I]f a detainee makes an un-elicited and spontaneous incriminating statement after being appropriately cautioned, there is no violation of s. 10(b)."

of the truck, and the retrieval of a cell phone than with speaking with counsel. Since there was no s. 10(b) breach, there was no need to consider the exclusion of evidence under s. 24(2). The accused was convicted of importing cocaine and possessing cocaine for the purpose of trafficking.

Ontario Court of Appeal

The accused argued that his s. 10(b) *Charter* rights were breached and the incriminating statement he made to the CBSA officers effectively admitting knowledge that he was importing cocaine was obtained as a result of that violation. Although he conceded that the officers were under no legal duty to stop him from making his spontaneous statement, he argued that the 52 minute delay after he made it but before he was afforded access to a telephone to contact counsel constituted a breach of his s. 10(b) right. And since no causal relationship need be shown between a *Charter* breach and the incriminating statement for that statement to be "obtained in a manner" that infringed s. 10(b), the statement ought to have been excluded under s. 24(2).

Right to Counsel

The Ontario Court of Appeal found the trial judge erred in characterizing the situation as one where the accused was not diligent in exercising his s. 10(b) right to speak with counsel. This was not a case where the accused was advised of his right to counsel, given an opportunity and the means to speak with counsel, and failed to pursue that right in a timely manner. Instead, the Appeal Court described what happened this way:

> In our view, what occurred may be more accurately described as follows: immediately upon being fully informed of his right to counsel for the third time, the [accused] made a spontaneous and unprompted incriminating statement. As this court has held, if a detainee makes an un-elicited and spontaneous incriminating statement after being appropriately cautioned, there is no violation of s. 10(b).
>
> As we have noted, the [accused] attempted to speak while he was being cautioned. The CBSA agent made him stop so that the agent could ensure that the [accused] was properly cautioned and advised of his right to counsel. It is clear on the record that once he had been read his rights, the [accused] immediately launched into making a statement. There is no evidence that the CBSA agents began to question or interrogate the [accused] before he made his statement. On the voir dire … [the accused] unequivocally described his statement as being spontaneous. …. In our view, the [accused's] evidence supports a conclusion that his statement was a spontaneous utterance made with full knowledge of his right to remain silent and speak to counsel. [reference omitted, paras. 14-15]

Although it was recognized that the officers were under a duty to refrain from eliciting any incriminating evidence from the accused until he had been given a reasonable opportunity to contact a lawyer or unequivocally waived his right to do so, the Court of Appeal concluded that even if the clarifying questions and the 52 minute delay in making it possible for the accused to speak to counsel was a *Charter* breach and impugned the prior spontaneous statement, the statement was nonetheless admissible under s. 24(2). Any breach in this case was not serious; the impact on the accused's rights was at the lowest end of the spectrum; and society's interest in an adjudication of the case on the merits clearly favoured admission.

The accused's appeal was dismissed.

Complete case available at www.ontariocourts.on.ca

THROWING KEYS AWAY ABANDONS PRIVACY INTEREST: NO s. 8 BREACH

R. v. Tran, 2018 ONCA 964

As a result of a report from a Hydro employee of high electrical consumption and a hydro by-pass at a residence, the police conducted surveillance and subsequently obtained a. s. 487 *Criminal Code* search warrant to enter the residence in relation to theft of electricity. While conducting surveillance and prior to executing the search warrant, police officers observed the accused, identified as one of the targets, drive to the residence and then exit a vehicle in the driveway.

As an officer exited his police vehicle and approached, the accused discarded some keys by tossing them onto the front lawn of the home. The officer picked up the keys and asked the accused whether there were any other people in the house. He responded "no". The accused was immediately arrested and a marihuana grow operation was found in the house. The keys the accused threw away were for the residence. The accused was charged with various *Controlled Drugs and Substances Act* offences and theft of electricity under the *Criminal Code*.

Ontario Superior Court of Justice

The accused sought to exclude the keys that he tossed and which were seized by the police during the events in the driveway of the residence. He argued, among other things, that he had been unreasonably searched contrary to s. 8 of the *Charter*. The Crown, on the other hand, submitted there was no search as the accused effectively abandoned his keys by tossing them away prior to his arrest. The judge agreed with the Crown, holding the keys were abandoned. This abandonment defeated the reasonable expectation of privacy standing that the accused needed to establish a s. 8 *Charter* breach.

"I find on the evidence that upon the abrupt arrival of the police at the driveway of the residence, the [accused] reacted and discarded his keys to the ground and therefore abandoned them," said the judge. ***"Thus, there is no search and no violation of his s. 8 Charter rights."***

Ontario Court of Appeal

The accused challenged the credibility findings made by the trial judge in concluding that he "threw" his house and car keys on the ground when approached by the police. But the Court of Appeal refused to accede to the accused's argument. It its view, the trial judge gave ample, cogent reasons for believing that the accused tossed his keys, rather than them being taken from his pocket by police or being directed to drop them. The Appeal Court rejected the accused's challenge to the trial judge's s. 8 ruling and dismissed the appeal.

Complete case available at www.ontariocourts.on.ca

Editor's note: Additional facts taken from *R. v. Tran*, 2015 ONSC 3907.

NEW BC POLICE COMPLAINT COMMISSIONER RECOMMENDED

The Special Committee to Appoint a Police Complaint Commissioner has unanimously agreed to recommend to the BC Legislative Assembly that Mr. Clayton Pecknold be appointed as BC's Police Complaint Commissioner. ***"Committee Members were impressed by Clayton Pecknold's leadership, personal integrity and commitment to public service"***, said the report recommending his appointment. ***"The Committee noted his professional background in both law and policing, and his valuable experience in working respectfully and effectively with a range of policing, civil liberties, and other stakeholder and community organizations. They especially recognized his strong ethics and values, and his progressive vision for policing and public accountability."***

REASONABLE GROUNDS NOT TO BE SUBJECT TO PIECEMEAL ANALYSIS

R. v. Palmer, 2018 ONCA 974

At 14:00 hours a Peel Regional Police officer received a tip from a confidential informer that "Sean" would be leaving a specific address, known to be a crack house, with crack cocaine to sell. Sean would be carrying the cocaine in his rectum and would probably leave on foot. The only drug dealer the officer was aware of in the area with the nickname Sean was the accused.

Shortly after receiving the tip, police attended the address, and waited in their parked car. Within 10 minutes of their arrival, the accused left the address on foot. He was arrested for possession for the purpose of trafficking at 16:25 hours and patted down. Police found a two-and-a-half inch folding knife concealed under his shirt at his waist. The accused was then arrested for carrying a concealed weapon and taken to the station. He was booked, and police took a cell phone from his backpack and money from his pocket. The money included three $5 bills with dye on them that were part of the "bait" money taken during an armed bank robbery that took place the day before. A strip search was also done but no drugs were found.

After the strip search, police did a CPIC check and learned the accused was a person of interest to the Toronto Police Service on charges involving an armed robbery of a TD Canada Trust bank the day before. During the robbery, two men entered the bank, one armed with a gun. They took bags of marked money and, when confronted by a customer, a shot was fired and an employee was struck by a bullet. The robbers then fled the bank pursued by the customer, who was also shot. The robbers subsequently fled in a stolen vehicle.

Toronto police officers attended the Peel Regional police station and arrested the accused for the robbery after he was released on a PTA in relation to the carrying a concealed weapon charge. As a result of the drug arrest, the accused was also found

Andre Palmer vaulting the TD Canada Trust bank's counter during robbery.
Source: Toronto Police Service

in possession a cell phone with a number that, with the help of a production order, police were subsequently able to place near the robbery and where the stolen vehicle was located, and which communicated with another phone 13 times before and after the robbery. The man who owned the other phone pleaded guilty to his participation in the armed robbery.

Ontario Superior Court of Justice

The accused argued, among other things, that the three $5 bait money bills, his cell phone, and his cell phone number and any information derived therefrom ought to be excluded as evidence under s. 24(2) of the *Charter* because his rights were infringed. He submitted, in part, that the police did not have reasonable grounds to arrest him for possessing drugs for the purpose of trafficking. Although he agreed that the arresting officer had the necessary subjective grounds, he suggested the grounds were not objectively reasonable. In his view, the information imparted by the confidential informer was unreliable: it was not compelling, credible, or corroborated. Since there were no reasonable grounds to arrest, the pat down search incident to his arrest was unreasonable.

Citing *R. v. Debot*, [1989] 2 S.C.R. 1140, the judge went on to hold that the officer's grounds for believing the person coming out of the address was in possession of drugs for the purpose of trafficking were objective reasonable. This included the cumulative effect of:

"The benchmark is a reasonable person standing in the shoes of the officer at the time of arrest with the officer's knowledge, the officer's experience and the officer's training. It is that person who must be able to conclude that the grounds existed. And this conclusion must take into account all the circumstances known to the officer, a determination that eschews piecemeal analysis and microscopic scrutiny of individual items shorn of their context."

- the information supplied by the confidential informer (including the nickname, address, specific drug, location of the drug on his body, and mode of transportation);
- the freshness of the tip (which creates concern to preserve the evidence);
- the arresting officer's reasonable belief that he knew the target was the accused;
- the arresting officer's reasonable belief that the address was a crack house; and
- police observation of the accused leaving the building on foot (which corroborates the informer's assertion that the target would leave on foot).

Having found the arrest lawful, the judge concluded the pat down search was incident to arrest to find evidence of drugs or drug paraphernalia. This led the police to discover a folding knife with a two-and-a-half inch blade hidden at the accused's waist underneath his shirt. Taking him to the police station for a strip search was also justified (police believed he had drugs in his rectum) and holding him for the hour spent to investigate whether he was wanted on other charges and to coordinate his arrest by the Toronto Police on the robbery charges did not render the detention arbitrary. The accused was convicted of robbery x 2, aggravated assault x 2 and discharging a firearm with intent to wound x 2.

Ontario Court of Appeal

The accused challenged his convictions contending that his initial arrest on the charges unrelated to the robbery was not based on reasonable grounds. Therefore, the evidence obtained from that unrelated arrest linking him to the bank robbery, including the bait money, should have been excluded because it was the product of a constitutional infringement.

The Arrest

Since the accused acknowledged that the arresting officer had the necessary subjective grounds to arrest him, the only issue remaining was whether objective reasonable grounds existed. Here, the Court of Appeal found the trial judge applied the proper legal standard and did not misapprehend any evidence material in reaching her conclusion:

> We approach this decision mindful that the trial judge need only have been satisfied that the grounds for arrest were objectively reasonable in the circumstances known to the officer at that time. The benchmark is a reasonable person standing in the shoes of the officer at the time of arrest with the officer's knowledge, the officer's experience and the officer's training. It is that person who must be able to conclude that the grounds existed. And this conclusion must take into account all the circumstances known to the officer, a determination that eschews piecemeal analysis and microscopic scrutiny of individual items shorn of their context.
>
> In our assessment, we are mindful of the fact that little is known about the informant's background or reliability. That said, the information provided was current and specific about place; about type; about storage of drug; and about method of transportation. In addition, this [accused] was known as a drug dealer. The only one who used the name "Sean". And the place described from which he

> was leaving was a known crack house. While the officer could not supply information about the antecedents and reliability of the confidential informer, it is commonplace that the Debot factors are not mandatory conditions precedent to permit reliance on confidential informer information in support of search or arrest authority. Further, deficiencies in one factor may be compensated by strengths in others. [paras. 15-16]

The Appeal Court concluded that the arrest was based on reasonable grounds and therefore was not arbitrary. Since the arrest was not constitutionally infirm, there was no need to assess the admissibility of the evidence under s. 24(2).

The accused's conviction appeal was dismissed.

Complete case available at www.ontariocourts.on.ca

Editor's note: Additional facts taken from *R. v. Palmer*, 2016 ONSC 153.

K9 TRACKING EVIDENCE ADMISSIBLE TO PROVE IDENTITY

R. v. Griffith, 2018 ONCA 875

Between 2:09 am and 2:12 am, two men, one using an apparent handgun, robbed a taxi driver. The robbers fled toward a partially frozen river. Police responded quickly to the taxi driver's call for help and spotted the accused at 2:20 am on the other side of the river. He matched the general description of one of the robbers. The accused ran away from the police and jumped over a series of fences into the backyards of houses. A tracking dog was used and the accused was caught at 2:22 am and arrested. Police noticed his boots, socks and pant legs were drenched with water.

The tracking dog was then taken to the scene of the robbery. He found a scent trail, which led from the area of the robbery to the edge of the river, and then from the opposite bank to where the accused had first been spotted by police. There were also footprints in the snow that went in the same direction as the accused's scent trail and a replica handgun resembling the one used in the robbery was found in the snow a few steps away from those footprints.

Ontario Superior Court of Justice

The judge found the accused guilty of robbery and using an imitation firearm in the commission of the offence. The judge admitted the tracking evidence of the dog handler to help prove identity of the accused as the robber. She stated:

> For the purposes of the admissibility of the evidence, I believe that [the dog handler] has particularly highlighted the success rate, not within the field but within the testing and the recertification of the higher standard by London Police Services. So for the admissibility, per se, I will allow it. Of course, then, there is cross-examination with respect to the evidence itself that will go to the issue of weight and what I apply to it. So I will allow the evidence to be admitted.

In convicting the accused, the judge went on to say:

> So based on the totality of the evidence, the timeline, the description of the perpetrator, the direct evidence of flight from police and jumping fences, the firearm being found in the locality where the accused was seen running, the evidence from [the dog handler of the tracking dog's] dialed-in scent of a fresh human scent can only be rationally and logically be inferred that it was the accused who robbed [the taxi driver] and walked with his accomplice westbound on Ann Street, as [the taxi driver] saw them do, and then ran down toward the river. At that point, there is no evidence of where and how the gun got across the river, except that the accused was seen running in that same area before he was apprehended. I have no reasonable doubt that the accused is one of the perpetrators in the robbery and is a party to the offence of using an imitation firearm with his accomplice.

The accused was sentenced to six months' incarceration for the robbery offence and 12 months' consecutive for using a firearm.

Ontario Court of Appeal

The accused appealed his convictions arguing, among other things, that the trial judge erred by admitting and relying on the dog tracking evidence. In his view, the tracking dog's test and certification scores were not enough to warrant admission of the evidence related to the dog's role in the apprehension of the accused. Instead, more was needed such as evidence related to the tracking dog's performance in actual cases.

The Court of Appeal, however, rejected this argument:

> In our view, the preconditions for admissibility were met in this case. [The dog] had been a tracking dog for three years. He received extensive training and evaluation throughout the three year period. The standard he reached and maintained was the London Police Service standard which is even higher than the provincial standard. [The dog handler] had logs and statistics for all the training [the dog] had done. {the dog] was always successful in tracking scenarios. Indeed, during the relevant period, [the handler] led the unit in statistics, including the time he spent with [the dog]. Finally, [the handler] gave detailed evidence about [the dog's] performance in this case. These factors, taken together, easily make the evidence relating to [the dog's] tracking in this case admissible … [reference omitted, para. 9]

The Appeal Court was also unconvinced that the trial judge erred in admitting the accused's flight from police as post-offence conduct, rather than considering other possible explanations for the flight such as an irrational or alcohol induced fear. But the defence offered no evidence on this issue. ***"As the trial judge said, 'there is no evidence of fear of police',"*** noted the Court of Appeal. ***"The only reasonable inference in all of the circumstances was that the [accused] was fleeing the robbery, to avoid being implicated in it."***

The accused's appeal was dismissed.

Complete case available at www.ontariocourts.on.ca

CRIMINAL CODE SEARCH WARRANTS OK EVEN THOUGH INCOME TAX ACT WARRANT AVAILABLE

R. v. Watts, 2018 ONCA 148

The accused was under investigation by the Canada Revenue Agency (CRA) for fraud. The fraud involved preparation of tax returns for 241 taxpayers. As a result, CRA investigators obtained s. 487 *Criminal Code* search warrants from a judge of the Ontario Court of Justice to search various premises including those connected to the accused. As a result, the CRA seized various computers and documents.

Ontario Superior Court of Justice

The accused made an application for an order quashing the search warrants issued to the CRA and for the return of the materials seized. The accused submitted, in part, that the CRA should have obtained the warrants under the *Income Tax Act* rather than the *Criminal Code*. The judge, however, rejected this argument and dismissed the accused's application. ***"While it would have been open to the CRA to obtain search warrants under either statute,"*** said the judge, ***"there can be no serious issue raised that Criminal Code search warrants were obtained when a criminal offence is alleged."*** The accused was subsequently convicted of fraud by a jury.

Ontario Court of Appeal

The accused appealed his conviction again objecting that the CRA obtained *Criminal Code* search warrants, rather than search warrants under the *Income Tax Act*. The Court of Appeal, however, agreed with the Superior Court judge's decision to dismiss the accused's application for an order quashing the search warrants. As the Appeal Court noted, there was nothing to add to the lower court's analysis. The accused's conviction appeal was dismissed.

Supreme Court of Canada

The accused sought leave to appeal to the Supreme Court of Canada, but the application was dismissed ([2018] S.C.C.A. No. 208).

Complete case available at www.ontariocourts.on.ca

POLICE MUST TURN THEIR MINDS TO SPECIFICS WHEN DELAYING ACCESS TO COUNSEL

R. v. Rover, 2018 ONCA 745

Police received an anonymous tip of drug dealing from a residence. They made observations of traffic at the residence and arrested a woman seen leaving. On arrest, the woman admitted to buying drugs at the residence. Police decided they had reasonable grounds to arrest the occupant of the home, who turned out to be the accused, and obtain a warrant to search it. However, for safety reasons, the police did not want to arrest the accused in his residence. So, when he left the home later that evening he was then arrested. He was advised of his right to counsel and immediately indicated he wished to speak to a lawyer. But he was not permitted to do so, nor was he told why he was not being allowed or when he would be allowed to speak with counsel. The accused was not questioned during the period he was denied access to a lawyer. Early the next morning, after police obtained and executed a search warrant at the residence, drugs were found. The accused was charged with various drug-related offences, including trafficking cocaine and possession for the purpose of trafficking.

Ontario Superior Court of Justice

The accused submitted, among other things, that the police breached his s. 10(b) *Charter* right to counsel when they did not immediately give him access to a lawyer upon request. In his opinion, the drugs seized from his residence should have been excluded under s. 24(2). For their part, various police officers testified that it was "customary" or "standard" practice for the police not to allow an arrestee to speak with counsel until after a search warrant was executed.

CHRONOLOGY	
8:45 pm	woman arrested after leaving residence
10:33 pm	accused leaves residence
10:41 pm	accused arrested, advised of right to counsel and asserted desire to speak with lawyer.
12:50 am	police receive signed telewarrant
2:55 am	police enter and secure residence
3:01 am	police begin search
4:20 am	police make decision to allow accused to contact counsel
5:45 am	accused actually speaks to lawyer.

Source: R. v. Rover, 2016 ONSC 4795

Although a detainee who asserts their right to counsel is entitled to contact counsel without delay, the judge noted that in some circumstances safety or evidence preservation concerns may justify a delay in allowing access to counsel. Here, the judge found that a search of a suspected drug dealer's residence engaged sufficient concerns about safety and the preservation of evidence that some delay in providing the accused with counsel was justified. The judge found the delay between the arrest and the securing of the residence (four hours and 20 minutes) was justified. However, the delay after the residence was secured until the accused was told he could call a lawyer (80 minutes) was not justified.

The judge then conducted a s. 24(2) analysis in relation to the 80 minute breach, and admitted the evidence. The accused was convicted on three counts of possessing different drugs, including fentanyl, for the purpose of trafficking. He was sentenced to 20 months on top of credit for 3 and 1/2 years of pre-trial custody.

Ontario Court of Appeal

The accused challenged his conviction arguing, in part, that the s. 10(b) breach began when he asserted his right to counsel and was not given the opportunity to speak with a lawyer. He suggested that the police refusal to allow him to speak to counsel was not precipitated by anything specific to the police investigation, but was the direct consequence of a police practice in denying access to counsel until the search of his home was completed. Further, he opined that the breach of his s. 10(b) right was made all the more serious because it resulted from a police practice of routinely denying immediate access to counsel in favour of the police efficiently using its resources.

s. 10(b) Right to Counsel

Justice Doherty, delivering the unanimous Appeal Court decision, described the s. 10(b) right and whether a delay or suspension of the right to counsel is justified this way:

> Section 10(b) of the Charter guarantees to anyone arrested or detained the right "to retain and instruct counsel without delay and to be informed of that right" (emphasis added).
>
> Section 10(b) obliges the police to advise a detained person of the right to speak with counsel without delay and, if the detained person exercises that right, the police must immediately provide the detainee with a reasonable opportunity to speak to counsel.
>
> The s. 10(b) jurisprudence has, however, always recognized that specific circumstances may justify some delay in providing a detainee access to counsel. Those circumstances often relate to police safety, public safety, or the preservation of evidence. …
>
> These cases have, however, emphasized that concerns of a general or non-specific nature applicable to virtually any search cannot justify delaying access to counsel. The police may delay access only after turning their mind to the specifics of the circumstances and concluding, on some reasonable basis, that police or public safety, or the need to preserve evidence, justifies some delay in granting access to counsel. Even when those circumstances exist, the police must also take reasonable steps to minimize the delay in granting access to counsel. [references omitted, paras. 24-27]

Put another way, the police must conduct a case by case assessment of whether the circumstances justify any delay in suspending the right to counsel. Here, Justice Doherty found the police, having chosen to arrest the accused before they obtained the search warrant, were not entitled to delay the right to speak to counsel for several hours while they applied for, obtained, and executed the warrant:

> [T]he evidence demonstrates that the officers involved in this investigation followed a practice that routinely prevented arrested persons from accessing counsel if the police

"[C]oncerns of a general or non-specific nature applicable to virtually any search cannot justify delaying access to counsel. The police may delay access only after turning their mind to the specifics of the circumstances and concluding, on some reasonable basis, that police or public safety, or the need to preserve evidence, justifies some delay in granting access to counsel. Even when those circumstances exist, the police must also take reasonable steps to minimize the delay in granting access to counsel."

"[T]o fall within the exception to the requirement that an arrested person be allowed to speak to counsel without delay, the police must actually turn their mind to the specific circumstances of the case, and they must have reasonable grounds to justify the delay. The justification may be premised on the risk of the destruction of evidence, public safety, police safety, or some other urgent or dangerous circumstance."

> intended to obtain a warrant to search a place for drugs and believed that the place had a connection to the arrested person. The rationale behind this practice appears to be that there is always a possibility that allowing an arrested person to speak to their lawyer could put the officers executing the warrant at risk or jeopardize the preservation of evidence. Under this practice, the [accused], as the occupier of the place to be searched, was prevented from contacting his lawyer, as were the two women who had been arrested earlier that evening. [para. 29]

And further:

> The police practice described by the officers replaces the narrow, case-specific exception to the constitutional right to speak to counsel without delay upon arrest with a protocol that routinely delays an arrested person's access to counsel for an indeterminate time, usually hours, whenever the police, for whatever reason, deem it appropriate to arrest them before applying for a search warrant. There is no evidence that any of the officers turned their mind to the specific circumstances of this case before deciding that the [accused] would be arrested and denied access to counsel for several hours while the police sought, obtained, and executed a search warrant. On the evidence of the police, there was no need to consider the specifics of this case. For them, the decision to arrest the [accused] before seeking the search warrant dictated that the [accused] would not be allowed to contact a lawyer until the warrant was executed.
>
> In my view, to fall within the exception to the requirement that an arrested person be allowed to speak to counsel without delay, the police must actually turn their mind to the specific circumstances of the case, and they must have reasonable grounds to justify the delay. The justification may be premised on the risk of the destruction of evidence, public safety, police safety, or some other urgent or dangerous circumstance. Furthermore, if the police determine that some delay in allowing an arrested person to speak to counsel is justified to permit execution of the warrant, then they must consider whether it is necessary to arrest the individual before they execute the warrant. The police cannot create a justification for delaying access to counsel by choosing, for reasons of convenience or efficiency, to arrest an individual before seeking, obtaining, and executing a search warrant. Police efficiency and convenience cannot justify delaying an arrested person's right to speak with counsel for several hours.
>
> The effective implementation of the right to counsel guaranteed by s. 10(b) depends entirely on the police. The police must understand that right and be willing to facilitate contact with counsel. The practice under which the officers involved in this case operated demonstrates a disregard of a fundamental constitutional right. The [accused's] right to speak with counsel was denied at the time of his arrest, when the police refused his request to speak with counsel. [paras. 32-34]

Thus, the unconstitutional delay was not a mere 80 minutes as the trial judge held, but rather almost six hours (calculated from the time of the accused's arrest until the police decided to allow him to contact counsel).

s. 24(2) *Charter*

Although there was no causal connection between the discovery of the drugs and the s. 10(b) breach, Justice Doherty found there was a close temporal connection sufficient to engage s. 24(2). And, even though the drug evidence was reliable evidence crucial to the Crown's prosecution of a serious crime and excluding it would ***"allow a guilty***

"Constitutional breaches that are the direct result of systemic or institutional police practices must render the police conduct more serious for the purposes of the s. 24(2) analysis. A police practice that is inconsistent with the demands of the Charter produces repeated and ongoing constitutional violations that must, in the long run, negatively impact the due administration of justice. This is so even if many of the breaches are never exposed in a criminal court."

person go free", the Court of Appeal nevertheless excluded the evidence.

First, the police misconduct was very serious. The police never turned their mind to the actual need to delay the accused's access to counsel and showed no interest in mitigating the delay. ***"Constitutional breaches that are the direct result of systemic or institutional police practices must render the police conduct more serious for the purposes of the s. 24(2) analysis,"*** said Justice Doherty. ***"A police practice that is inconsistent with the demands of the Charter produces repeated and ongoing constitutional violations that must, in the long run, negatively impact the due administration of justice. This is so even if many of the breaches are never exposed in a criminal court. … A police practice that routinely holds detained individuals incommunicado while the police go about obtaining and executing a search warrant must, over time, bring the administration of justice into disrepute."***

Second, the near six hour unconstitutional delay in allowing the accused to speak to his lawyer had a significant impact on his *Charter*-protected interests even though the police did not attempt to question him:

> The right to counsel is a lifeline for detained persons. Through that lifeline, detained persons obtain, not only legal advice and guidance about the procedures to which they will be subjected, but also the sense that they are not entirely at the mercy of the police while detained. The psychological value of access to counsel without delay should not be underestimated.
>
> In this case, instead of providing the[accused] with the lifeline to counsel when he requested it, the police put him in the cells. The [accused] was held for several hours without any explanation for the police refusal of access to counsel, and without any indication of when he might be allowed to speak to someone. His right to security of the person was clearly compromised. The significant psychological pressure brought to bear on the [accused] by holding him without explanation and access to counsel for hours must be considered in evaluating the harm done to his Charter-protected interests. [paras. 45-46]

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

Complete case available at www.ontariocourts.on.ca

Editor's note: Additional facts taken from *R. v. Rover*, 2016 ONSC 479.

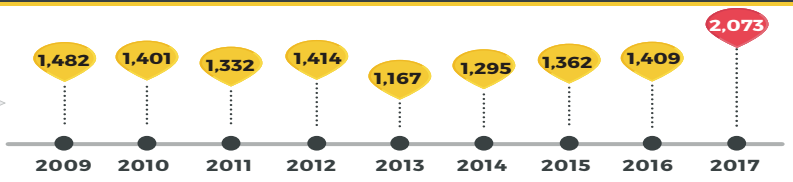
"A police practice that routinely holds detained individuals incommunicado while the police go about obtaining and executing a search warrant must, over time, bring the administration of justice into disrepute."

U.N. DECADE OF ACTION FOR ROAD SAFETY

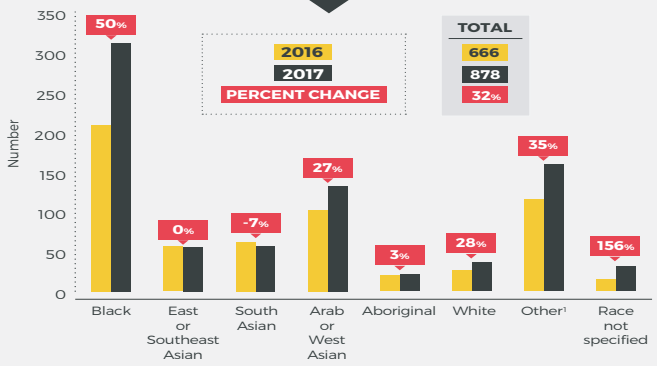
2011-2020

POLICE-REPORTED HATE CRIME IN CANADA, 2017

The number of police-reported hate crimes in 2017 was **47%** higher than in 2016, marking the **fourth** consecutive annual increase. This **was the result of** increases in the number of hate crimes committed against the **Muslim**, **Jewish and Black populations**.

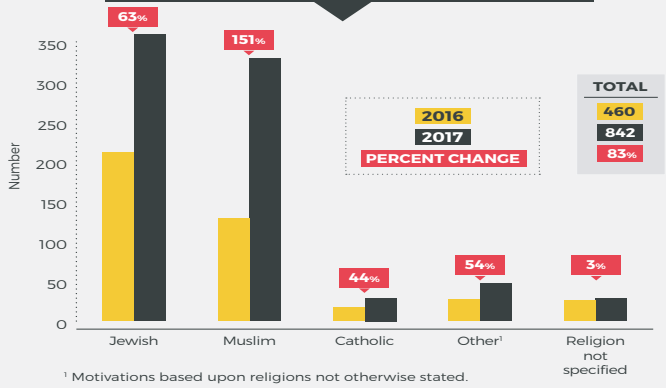


In 2017, **43%** of all police-reported hate crime was **motivated by hate of race/ethnicity**.



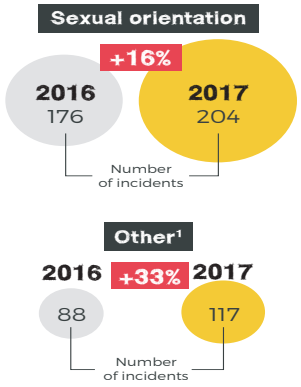
¹ Motivations based upon race or ethnicity not otherwise stated and those which target more than one group.

In 2017, **41%** of hate crime was **motivated by hate of religion**.



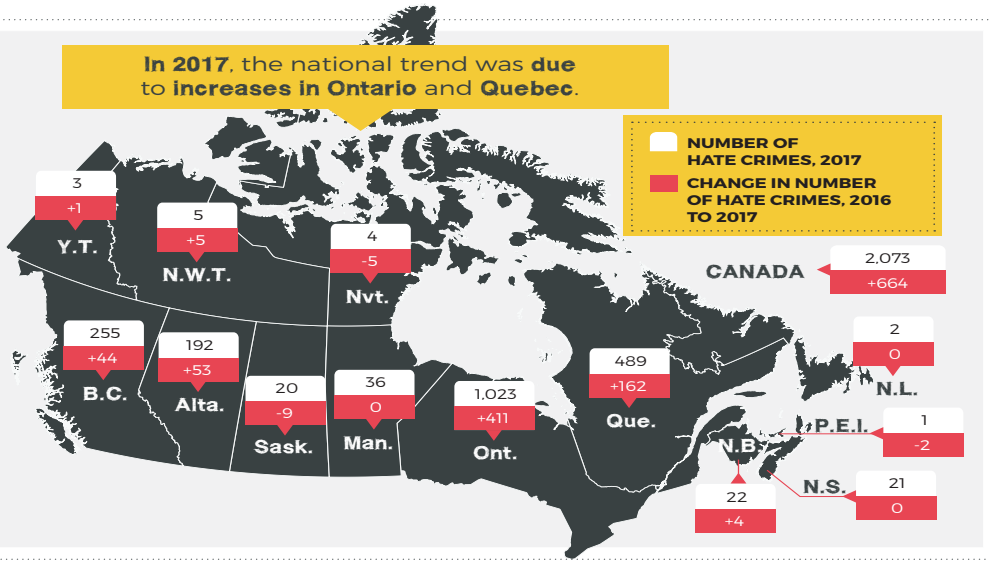
¹ Motivations based upon religions not otherwise stated.

In 2017, **10%** of hate crime was **motivated by hate of sexual orientation**.

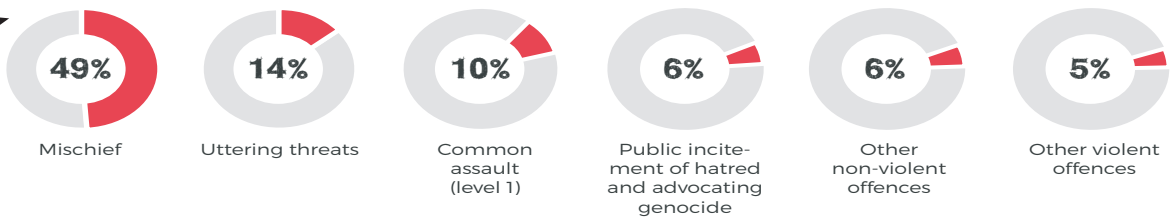


¹ Includes mental or physical disability, language, sex and other similar factors.

In 2017, the national trend was **due** to **increases in Ontario** and **Quebec**.



The **majority** of police-reported hate crimes were **property offences**.



Note: Hate crimes where the type was unknown have been excluded. Therefore, the totals for each hate crime type shown will not add up to the overall total for 2016 and 2017.
Source: Statistics Canada, Canadian Centre for Justice Statistics, Uniform Crime Reporting Survey. "Police-reported hate crime, 2017," *The Daily*

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NO CONDITIONS AVAILABLE ON s. 810.1 CC APPLICATION BY SUMMONS

R. v. Nowazek, 2018 YKCA 12

The accused was summonsed to Yukon Territorial Court to appear on a s. 810.1 *Criminal Code* (fear of sexual offence) application. He denied any wrongdoing and was granted an adjournment to retain a lawyer. Crown then sought an order requiring the accused enter into an interim recognizance pending the s. 810.1 hearing. Citing public safety concerns, the judge granted the Crown's request and ordered that the accused enter into a recognizance with a number of conditions. These conditions included a prohibition from accessing or possessing child pornography, and required the accused to allow the police access to his home for the purposes of ensuring his compliance with the recognizance.

After the accused was released, he went directly home and found police waiting for him. The police told the accused they were going to search his residence "as per the recognizance". The police were allowed into the home and they searched several computers, including a laptop which had a browser history reflecting visits to child pornography websites. The accused was arrested for child pornography offences under s. 163.1 of the *Criminal Code*. The police then obtained a search warrant, the ITO of which included the browser history on the accused's laptop. Upon execution of the warrant, police found child pornography, prohibited firearms, ammunition and explosive substances. The accused was charged with accessing child pornography, possessing child pornography, possessing explosive substances, and various other firearms-related offences.

Yukon Supreme Court

At trial the Crown conceded that the accused did not consent to the search nor did the police have sufficient grounds to obtain a search warrant before conducting the search purportedly authorized by the recognizance condition. The accused, however, argued there was no jurisdiction to impose an interim recognizance on him because he appeared in court in response to a summons. And, even if a recognizance could be imposed, the accused submitted that its conditions exceeded the scope of what was permissible under s. 810.1. He contended his rights under ss. 7 and 8 of the *Charter* were breached and the evidence ought to have been excluded.

The judge found there was no jurisdiction to impose an interim recognizance on the accused pending resolution of the s. 810.1 application because he had appeared in response to a summons. Instead, a person must be arrested and taken before a judge before an order can be made releasing that person on a recognizance with conditions. As a result, the interim recognizance order was invalid.

IMPUGNED CONDITIONS

Condition 8: "You are prohibited from the possession, purchase or viewing of any pornographic materials featuring or having any reference to children."

Condition 9: "You are not to possess any computer, computer software or computer peripherals such as an internet enabled cell phone or any other devices capable of downloading pictures from the internet, except as their mobile numbers, IP addresses, usernames and passwords are provided to [named police officer] or his designate. You must also provide to [named police officer] written releases sufficient to authorize any service provider to disclose your usage information and records to [named police officer]."

Condition 10: "You shall allow your Bail Supervisor or the Royal Canadian Mounted Police access to your home to ensure your compliance with the conditions of this order."

"[W]en the police swear an information under s. 810.1(1), they have two choices. The first is to seek a summons. The second is to seek an arrest warrant. In this case, the police opted for the former route. As a result, it was not open to the Crown to invoke the judicial interim release regime when [the accused] appeared in response to the summons."

The judge also went on to hold that, even if an interim recognizance order could be imposed on a defendant summoned to court in response to an application made under s. 810.1, conditions requiring a defendant to submit to searches of their home and personal computer fell outside the scope of the conditions authorized by s. 810.1(3.02). The information relied on to obtain the warrant derived from the evidence gathered during the recognizance compliance search of the accused's home and personal computers was excised from the ITO. Once excised, there was no basis upon which the search warrant could have issued. The warrant was quashed and the second search therefore breached s. 8 of the *Charter*. The judge excluded the evidence under s. 24(2) and acquittals on all charges were entered.

Yukon Court of Appeal

The Crown argued that the trial judge erred in finding that the court had no jurisdiction to impose an interim recognizance on the accused pending resolution of the s. 810.1 hearing because he appeared in response to a summons. The Crown also submitted that the trial judge erred in holding the search conditions went beyond the type of conditions authorized by s. 810.1. In the Crown's view, the police search did not breach s. 8 of the *Charter* and the evidence should not have been excluded under s. 24(2).

Jurisdiction

After reviewing the legislative scheme at the time the interim recognizance order was imposed and the relevant case law, the Court of Appeal found the trial judge correctly concluded that the lower court had no jurisdiction to impose an interim recognizance on the accused. ***"In my view, a judge cannot apply the judicial interim release provisions in s. 515 to a defendant who appears in response to a summons in s. 810.1 proceedings,"*** said Justice Fitch, writing the unanimous judgement. ***"Section 515 is triggered when an accused is 'taken before a justice'. A summoned defendant is neither in custody nor 'taken before a justice'."***

If, however, a defendant is arrested on a warrant to compel appearance on a s. 810.1 application and taken before a justice, s. 515 governs their release pending the hearing of the Crown's application for a recognizance. As Justice Fitch noted:

> If the integrity of the proceedings, including protection of the public, demands that a defendant in s. 810.1 proceedings be detained or subject to conditions of release pending the hearing of the Crown's application for a recognizance, the police must seek a warrant for the person's arrest. A summons does not trigger the s. 515 judicial interim release regime. [para. 97]

And further:

> Turning to this case, I conclude that the Territorial Court judge lacked jurisdiction to impose an interim recognizance on [the accused] pending the hearing of the s. 810.1 application. If imposing restrictions on [the accused's] liberty was necessary to preserve the integrity of the s. 810.1 proceedings (because, for example, he posed an imminent risk to children), the police could have sought an arrest warrant. It is unclear to me why they did not do so. Given [the accused's] history and the conduct motivating the application, it is likely that an arrest warrant would have issued had one been sought.

> It must be recalled that, at the relevant time, [the accused] was an untreated sexual offender who was, by his own admission, unable to control his deviant sexual impulses. In 2009, he was determined to be a high risk to reoffend, particularly in relation to children. The evidence supplied overwhelming grounds for concern that [the accused] was attempting to befriend children with offers of candy and other gifts. The children he approached appear to have been complete strangers to him. There was a considerable body of evidence in this case that the defendant posed an imminent risk to the safety of children.
>
> In summary, when the police swear an information under s. 810.1(1), they have two choices. The first is to seek a summons. The second is to seek an arrest warrant. In this case, the police opted for the former route. As a result, it was not open to the Crown to invoke the judicial interim release regime when [the accused] appeared in response to the summons. [paras. 103-105]

The Court of Appeal also recognized there may be cases where, on first appearance, a defendant may seek an adjournment of the s. 810.1 recognizance application to retain counsel. If a defendant was summonsed it could be that an unanticipated delay in the hearing due to an adjournment may put the community at risk if the defendant was released without judicially imposed conditions. To fill this public interest gap, Justice Fitch suggested that s. 512 would allow the judge to issue a warrant for the defendant's arrest at that time despite the fact that a summons had been previously issued.

The Recognizance Conditions

Even if conditions could have been imposed on the accused through an interim recognizance pending the s. 810.1 hearing, the Court of Appeal would have concluded that the conditions allowing the police to enter and search his home and computer went beyond the conditions that could be authorized by s. 810.1(3.02) when the recognizance was imposed:

> [T]he open-ended language of the residual power in s. 810.1(3.02) cannot be relied on to override the regular scheme for search warrants

> in relation to a defendant's home or personal computer. To find otherwise would allow police to circumvent the requirement for a search warrant, as the police did in this case. This would subject a defendant in proceedings of this kind to different standards than those set by Parliament for the issuance of a search warrant. Establishing Charter-compliant standards for searches of an individual's home and personal computer must be left to Parliament, not to the discretion of judges in individual cases.
>
> If the police suspect that a defendant is committing an offence under s. 811 of the Code by breaching the terms of a s. 810.1 recognizance, they must resort to "the usual investigatory techniques and manner of proof as any other offence". The residual power to impose conditions cannot be used to create by proxy a search warrant for the purpose of investigating suspected breaches of a recognizance order.
>
> In the result, to the extent that Conditions 8, 9 and 10, read together, required [the accused] to submit to searches of his home and personal computer, they were not authorized by s. 810.1. [references omitted, paras. 128-130]

The Appeal Court, however, agreed with the Crown that the some of the conditions enumerated in the current version of s. 810.1(3.02) are more intrusive than those that existed at the time the conditions were imposed in this case. But the Crown could not rely on the current version as evidence of Parliamentary intent "to condone aspects of enforcement in s. 810.1 orders".

s. 8 *Charter* Breach + s. 24(2)

Since the interim recognizance was invalid, the police had no lawful authority to search the accused's home and computer without a warrant to ensure compliance with the recognizance. As a consequence, there was no basis upon which the warrant to search the accused's home could have been issued once the information from the warrantless search was excised from the ITO. The accused's s. 8 *Charter* right to be free from unreasonable search and seizure was thus infringed.

The Court of Appeal then considered s. 24(2) and concluded the trial judge made no error in excluding the evidence gathered from the accused's home and computer devices. Although the evidence was reliable and society had a compelling interest in cases involving crimes implicating the safety of children, the *Charter* infringing state conduct and the impact of the breach on the *Charter*-protected interests of the accused were serious.

First, even though the police acted in good faith by relying on the recognizance in searching the accused's home, the police were waiting at his home to search it before the accused was given any opportunity to bring himself in compliance with the recognizance. Second, the searches were warrantless and the evidence was not otherwise discoverable. The intrusion into the accused's home and personal computer, in which he had a very high expectation of privacy, was a serious invasion into his privacy interests.

The trial judge's exclusion of evidence was upheld and the Crown's appeal seeking a new trial was dismissed.

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

Note-able Quote

"Don't measure yourself by what you have accomplished but by what you should have accomplished with your ability."

John Wooden

JUDGE FAILED TO PROVIDE SUFFICIENT REASONS FOR FINDING OFFICER HAD RGB

R. v. Chowdhury, 2018 ABCA 348

If a judge does not provide sufficient reasons and fails to explain what grounds they relied upon and how those grounds objectively supported their conclusion that the accused had committed or was about to commit an indictable offence, a new trial may be ordered. In this case, the accused was facing several firearms offences. He argued at trial that the police had no reasonable grounds to arrest him and, therefore, any subsequent search was unlawful and breached s. 8 of the *Charter*. In finding a loaded 9 mm pistol hidden in a compartment of a vehicle admissible as evidence, the judge gave very brief reasons for upholding the legality of the arrest.

"When one looks at all of the circumstances, and the operating minds of the police officers, based on the information that was coming in, no doubt in my mind that the police had reasonable and probable grounds to arrest all the occupants in the vehicle, in the circumstances," said the judge on the *voir dire*. ***"And they did so. And I might add parenthetically, because this Court's often been critical of police work, I find the police work done here in these circumstances in effect of the arrest, had been careful, well thought out, and – and well executed. On that basis, I take it the evidence led on the voir dire, is obviously admissible in the trial proper."*** The judge went on to convict the accused of various firearm offences and sentenced him to 40 months' imprisonment.

The Alberta Court of Appeal then overturned the accused's conviction. In its view, these reasons provided by the trial judge in upholding the arrest were insufficient. The accused's appeal was allowed, his conviction was vacated and a new trial was ordered before a different trial judge.

Complete case available at www.canlii.org

Editor's note: Additional facts taken from *R. v. Chowdhury*, 2018 ABPC 22

ADOPTION OF PARAGRAPHS WRITTEN IN THIRD PERSON OK: ITO VALID

R. v. Beaumont, 2018 BCCA 342

Police received information from a confidential informer of unknown reliability. The information identified the accused by name, and provided the address of his residence. The informer stated that the accused had a licence to grow marihuana at his home, but was growing more plants than were permitted by the licence. The informer also said there were two grow rooms in the house – one in the basement and one in the garage – and that each room had 18 grow lights with 30 plants per light. This information was passed on to the affiant. There were two licences to produce medical marihuana associated with the residence allowing for up to 108 plants to be grown there.

Another officer, a trained thermographer, made observations of the property and took Forward Looking Infrared (FLIR) device readings. He described the residence and reported that a portion of the basement and the garage had elevated heat signatures. As well, the half of the hydro box closest to the residence was hotter than the other half. The thermographer provided the resulting information to the affiant in the form of draft paragraphs for the ITO. These paragraphs were written from the standpoint of the recipient of the report, not from the thermographer's own standpoint. For example, the draft stated, in part: ***"I was advised by [the thermographer], that he is a trained thermographer and utilized a thermal imaging device, also known as Forward Looking Infa Red ("FLIR") while conducting an examination of [the accused's residence]."***

The affiant then contacted Fortis BC, the electricity supplier to the residence, and obtained electrical consumption data for a period of just over a year. Fortis BC had flagged the residence for unusually high electrical consumption. Recognizing that the legal marihuana grow operation at the residence would consume electricity, the affiant set out to estimate the amount it would be expected to use. Based on his calculations, which included estimating the amount of electricity an air conditioner might use based on furnace fan consumption, the affiant concluded that the accused was consuming almost three times more power than he should be consuming. He also noted that water consumption data for the property was also excessive, which was "consistent with a larger grow operation".

The affiant obtained a search warrant for the accused's residence on the basis that there were reasonable grounds to believe that a larger grow operation was being conducted on the site, and that a search of the residence would furnish evidence of illegal marihuana production. The ITO for the warrant contained the information provided by the confidential source, readings from the FLIR, and electricity consumption data. When the search was conducted, police found a total of 3,317 marihuana plants in the home.

British Columbia Supreme Court

The accused argued that the search warrant ought to have been ruled invalid. He first challenged the **"facial validity"** of the search warrant. He submitted:

- the evidence of the confidential informer was of unknown reliability, and that the source of the informer's information was unknown.
- the electrical consumption evidence was of limited assistance because it was not based on a comparison of the accused's residence with other homes of similar size and construction that housed a 108 plant legal grow operation; and
- the FLIR data was as consistent with a legal grow operation as with an illegal one.

In upholding the warrant, the judge noted the question was not whether she would have issued the warrant, but whether there was admissible evidence before the issuing justice that was

What the trial judge found COMPELLING (detailed):

The informer provided:

- The street name on which the accused's house was located;
- The first and last name of the accused;
- The fact that there was a licenced grow operation at that address or at that residence;
- The fact that there were many more plants than permitted by the licences;
- The fact that that the grow operation was in two rooms, one in the basement and one in the garage; and
- The fact that there were 18 lights per room with 30 plants per light.

What the trial judge found CORROBORATING:

- FLIR found heat signatures emanating from the basement and the garage.
- The police were able to corroborate the accused's association with the residence,
- The police were able to corroborate the location of the residence,
- The police were able to corroborate the fact that there was a licenced grow operation at the residence.
- The hydroelectric consumption information was more consistent with what the informer told the police about the grow operation than with a 108 plant licenced grow operation.

reasonably capable of belief and that would provide grounds for the issuance of the search warrant. She considered three factors in assessing the information provided by the informer - whether the information was **compelling**, whether the source was **credible**, and whether investigation **corroborated** elements of the information. Although the informer was of unknown reliability and their source of information was unknown, she found the information to be compelling (detailed) and meaningfully corroborated (FLIR and electrical consumption).

The accused then sought to challenge the **"subfacial validity"** of the search warrant. Although the judge granted leave to cross-examine the FLIR operator and the affiant on the electricity consumption information, she did not allow the accused to cross-examine the affiant in relation to the source of information or character of the informer as this would likely be privileged.

The thermographer indicated that he adopted a practice of writing his reports in the third person to make it easier for his colleagues to prepare ITOs simply by cutting and pasting paragraphs of his reports. The accused characterized this practice as being one where the thermographer was ***"pretending to be [the affiant]"***. He contended this would subvert the entire prior authorization process. The judge, however, rejected this characterization. ***"There is nothing inherently wrong with the FLIR operator writing his report in the third person,"*** said the judge. ***"The caveat is that, of course, the affiant must carefully read it and ensure that, to the best of his knowledge, it is accurate before he inserts it into his ITO … ."*** The judge found that affiant read the paragraphs drafted by the thermographer and satisfied himself that the paragraphs accurately reflected his beliefs, based on the information provided by the thermographer. Although the judge found the Crown should have disclosed the third person report to the accused, this non-disclosure was not sufficiently serious to justify excising the FLIR information from the ITO as it was not calculated to mislead.

As for the evidence concerning consumption of electricity, the judge excised the estimate of the amount of electricity needed for air conditioning because the affiant lacked knowledge in the area of comparing air conditioners to fans. The judge, however, rejected the accused's effort to excise the power consumption information because the affiant relied on his experience with illegal grow operations in preparing his estimates rather than

researching and providing information on legal grow operations. ***"There is no evidence before me that there is, in fact, any different practice employed by licenced marihuana growers and no basis upon which I could find that the affiant knew or ought to have known of such difference if one even exists,"*** said the judge. The validity of the search warrant was upheld and the accused was convicted of producing marihuana.

British Columbia Court of Appeal

The accused again argued that it was improper for the thermographer to provide his report to the affiant in the form of paragraphs to be cut and pasted into the ITO, and that this served to subvert the prior authorization process. Further, he maintained that the electricity consumption data should have been excised from the ITO or, alternatively, given no weight. Finally, had the electricity consumption information been excised, he contended that the ITO did not supply the necessary reasonable grounds, the standard required for the issuance of a warrant. Since the warrant should have been set aside, he wanted an acquittal entered or at least a new trial ordered.

Cut and Paste Paragraphs

Justice Groberman, authorizing the Court of Appeal's decision, disagreed that the manner in which the thermographer prepared his report in the third person subverted the judicial authorization process and should have resulted in the warrant being quashed. Even if there was a residual discretion for a judge to set aside a warrant which was otherwise predicated on a proper evidentiary foundation, this case was not one in which the residual discretion would apply. There was no fraud, intentional misleading or other abuse that could be said to undermine the prior authorization process. Instead, the Appeal Court found ***"there was nothing at all improper in the manner in which [the thermographer] prepared his report"***:

"There is nothing untoward about a person drafting a statement that is to be sworn by another person, as long as sufficient care is taken to ensure that the [affiant] is in a position to swear to the facts in the statement, and does so voluntarily. In fact, many, if not most, affidavits used in the courts are drafted by persons other than the [affiant]."

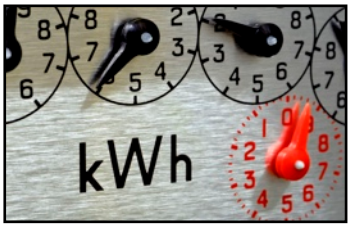
> [C]ounsel for [the accused] mischaracterizes [the thermographer's] conduct when he says that [the thermographer] "pretended" to be [the affiant]. He did nothing fraudulent or misleading. It cannot be said that he intended to mislead [the affiant] by writing his report in the third person; [the affiant] obviously knew that the report was written by [the thermographer], not by himself. [para. 46]

And further:

> What occurred here was no more than that [the thermographer] drafted paragraphs for inclusion in [the affiant's] ITO. It was up to [the affiant] to consider the paragraphs, and to decide whether or not to include them. There is no suggestion that the paragraphs were inaccurate, nor that [the affiant] was under any pressure to use the paragraphs.
>
> There is nothing untoward about a person drafting a statement that is to be sworn by another person, as long as sufficient care is taken to ensure that the [affiant] is in a position to swear to the facts in the statement, and does so voluntarily. In fact, many, if not most, affidavits used in the courts are drafted by persons other than the [affiant]. [paras. 48-49]

The affiant's ***"inclusion of the paragraphs in the ITO was not calculated to mislead the issuing justice and had no capacity to do so,"*** said Justice Groberman. ***"No one reading the ITO could be misled by its contents."*** Thus, there was no basis to consider setting aside the warrant.

Electricity Consumption Evidence



The Appeal Court rejected the accused's submission that the affiant had a duty to highlight his lack of experience in legal medical marihuana grow operations in the ITO, or investigate and provide information on electricity usage in legal grow operations. First, the ITO described the affiant's involvement in investigating grow operations which would be understood to be illegal ones. Second, it was mere speculation that a legal grow operation might consume more electricity than an illegal one. There was no suggestion that the affiant had any reason to suspect that there would be any significant difference in electrical consumption between a legal and an illegal operation, and there was no basis provided ***"to doubt that electricity consumption in legal grow operations is similar to (if, perhaps, not exactly the same as) consumption in illegal operations."***

Finally, the sources of information used to calculate the average anticipated electrical consumption data were disclosed. There was sufficient information to allow the issuing justice to assess the credibility of the information and the validity of the officer's assumptions (apart from the air conditioning data in the excised portion of the ITO). The consumption information, despite certain frailties, was capable of showing that the electricity usage significantly exceeded what would be expected for the residence, even taking into account a legal 108 plant marihuana grow operation:

> [T]he ITO in the case before us took into account the medical marihuana licences, and attempted to account for the electrical needs of such an operation. … .
>
> The evidence in the ITO showed that the [accused's] residence was using vastly more electricity than an average home, and even when a generous estimate was added to account for the legal grow operation, only a fraction of the consumption could be explained. The information was sufficient to show that seasonal heating or cooling requirements were not responsible for the excessive consumption, as a full year of data was set out. The ITO also noted that there were no visible pools or hot tubs active at the residence. [paras. 60-61]

Sufficiency of the Grounds

The Appeal Court concluded that the trial judge did not err in holding that the confidential source information was **compelling**, and significantly **corroborated** by the FLIR and electrical consumption evidence:

> The evidence of the confidential informant included significant details with respect to the grow operation, and those details were corroborated by the FLIR data. The excessive electrical consumption of the residence could be accounted for by the presence of a large-scale grow operation of the sort described by the informant, and there was no other ready explanation for it. In the circumstances, the evidence before the issuing justice met the Garofoli standard. It provided evidence that gave rise to a reasonable belief that a search of the premises would disclose that an illegal marihuana production facility was being operated there. [para. 64]

The search warrant was upheld and the accused's appeal was dismissed.

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

ENTRAPMENT TEST NEED ONLY REASONABLE SUSPICION, NOT PROOF BEYOND A REASONABLE DOUBT

R. v. Ndahirwa, 2018 ABCA 359

After police obtained the accused's telephone number from a confidential informer, an undercover police officer contacted the accused to arrange a purchase of cocaine. As a result, the accused pled guilty to trafficking in cocaine. An application for a stay of proceedings based on entrapment was denied by the Alberta Court of Queen's Bench. The judge noted that the test for entrapment was whether the authorities provided the person with the opportunity to commit an offence without acting on a reasonable suspicion that the person was already engaged in criminal activity or when the police were acting pursuant to a bona fide inquiry.

In assessing whether the undercover officer had a reasonable suspicion based on objectively discernible facts that would justify the telephone call to the accused, the judge examined the evidence to see if it was compelling, credible, and corroborated. The judge concluded that the information received by the police was sufficiently detailed to make it **compelling**. As well, the person who answered the phone responded as the informer suggested he would, prior to the topic of drugs even being raised. And, although some of the details provided by the informer did not match the accused and his vehicle, the judge was satisfied that the events conformed sufficiently to the anticipated pattern to remove the possibility of innocent coincidence. Moreover, the police had used this informer on a number of occasions and he had previously provided **credible** information.

The accused then appealed the denial of his entrapment claim to the Alberta Court of Appeal. He submitted that that police could have done more to corroborate the tip by following up on the information since not all information matched the accused. Further, in his view, not enough detail was provided about the informer. As well, the informer was paid, had a criminal record and may have had a drug addiction.

Justice O'Ferrall, delivering the Court of Appeal's opinion, found protecting informer privilege precluded the disclosure as the accused suggested. And, even though the informer was paid, had a record, and may have had a drug addiction, those things did not displace the informer's record of providing accurate information. As for whether all the information need be **corroborated** or match the accused, Justice O'Ferral stated:

> The test is that there must be a "reasonable suspicion", not proof beyond a reasonable doubt, or even proof on a balance of probabilities. The information available to the undercover officer may not have been sufficient to support a conviction, but it was sufficient to raise a reasonable suspicion based on verifiable facts, going beyond random virtue testing.
>
> The low-key, test buyer approach used by the undercover officers in this case does not engage the risk of enticing innocent persons to commit crimes that they would not otherwise commit. [references omitted, paras. 5-6]

The accused's appeal was dismissed.

Complete case available at www.canlii.org

"The test is that there must be a 'reasonable suspicion', not proof beyond a reasonable doubt, or even proof on a balance of probabilities. The information available to the undercover officer may not have been sufficient to support a conviction, but it was sufficient to raise a reasonable suspicion based on verifiable facts, going beyond random virtue testing."

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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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POLICE MEMORIAL SHOULDER FLASH UNVEILED BY NEW WESTMINSTER PD

New Westminster – The New Westminster Police Department (NWPD) has unveiled a custom designed police memorial shoulder flash that officers will wear as part of their duty uniforms as a sign of respect for fallen police officers. The police memorial shoulder flash will be worn in the event of a fallen Canadian police officer until the time of their memorial service.

"These shoulder flashes are a very visible way for us to show our support for our brothers and sisters in our law enforcement family," stated Chief Constable Dave Jones. ***"As a society, as police officers, as people who enjoy the rights and freedoms given to all citizens, may we never forget the sacrifices made by those who have given everything defending and protecting us."***

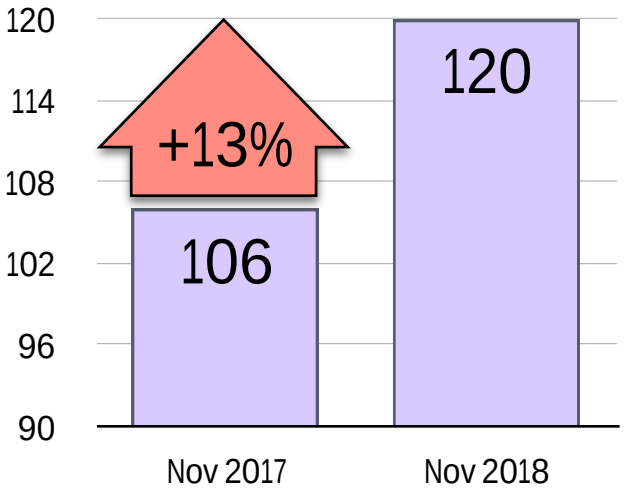
The company, Emblazon, who makes the shoulder flashes for the NWPD will be donating proceeds from the sale of the police memorial shoulder flashes to the Police and Peace Officers' Memorial Ribbon Fund.

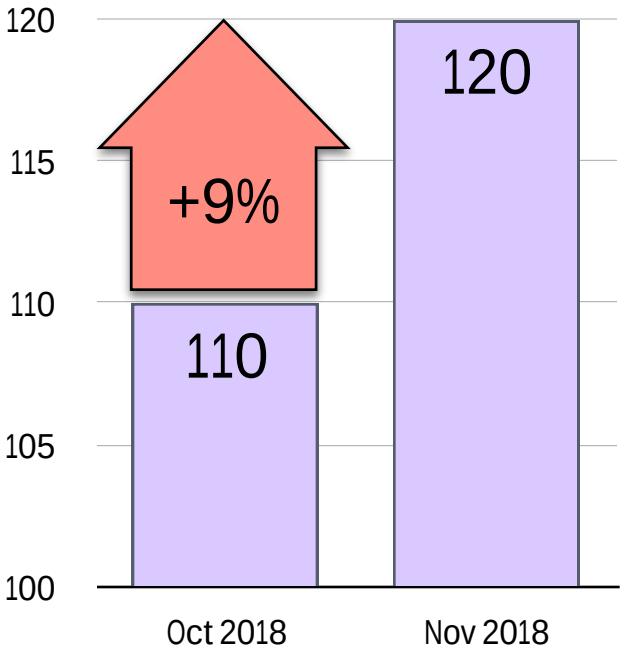
The staff-led initiative adds to the current specialty NWPD shoulder flashes for Pride, anti-bullying, domestic violence, Remembrance Day, and Canada Day.

Source: New Westminster Police Department

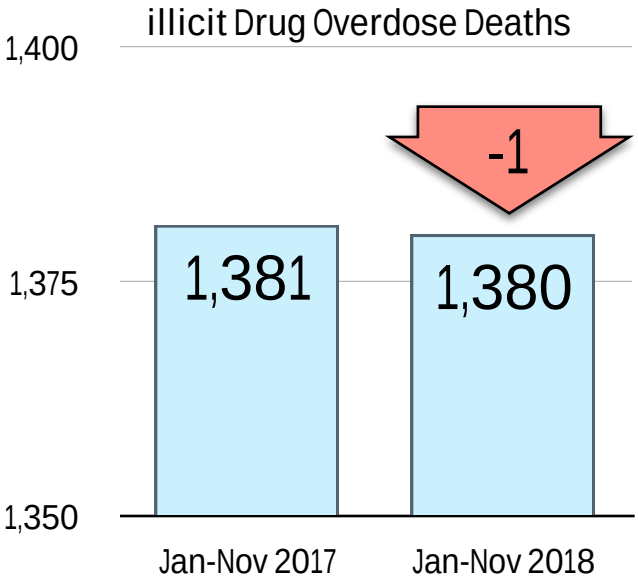
ILLICT DRUG OVERDOSE DEATHS IN 2018

The Office of BC's Chief Coroner has released statistics for illicit drug overdose deaths in the province from **January 1, 2008 to November 30, 2018**. In November there were 120 suspected drug overdose deaths. This represents a **+13%** increase over the number of deaths occurring in November 2017 and a **+9%** increase over October 2018. The November 2018 statistics amount to about **4 people dying every day of the month.**





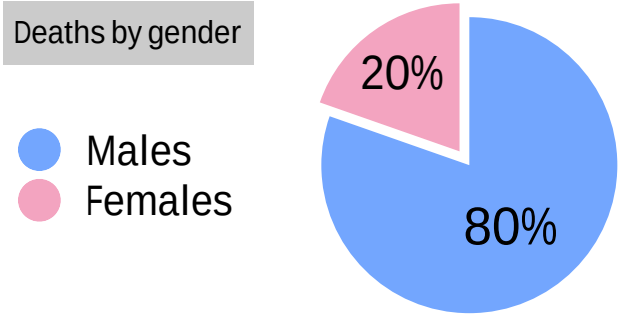
There were a total of **1,380** illicit drug overdose deaths from January through November 2018. This is **one** death less than last year's total at this time.

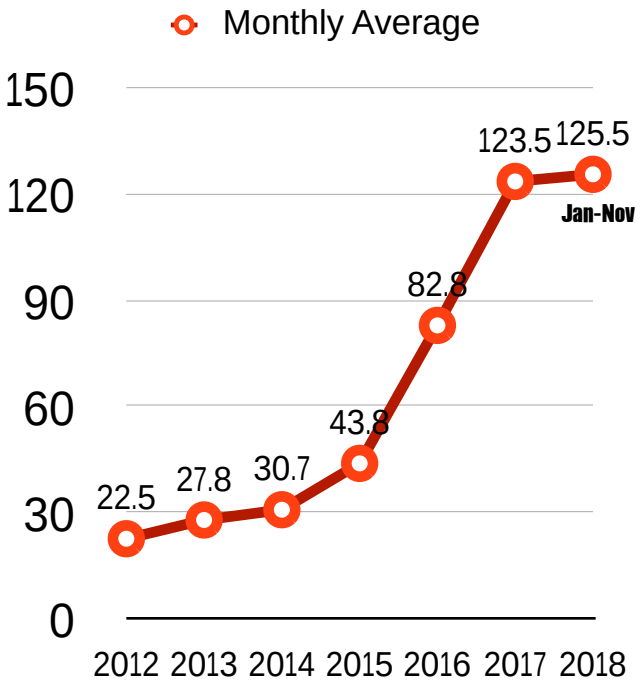


The **1,486** overdose deaths last year (2017) amounted to more than a **346%** over 2013. The report also attributed fentanyl laced drugs as accounting for the increase in deaths.

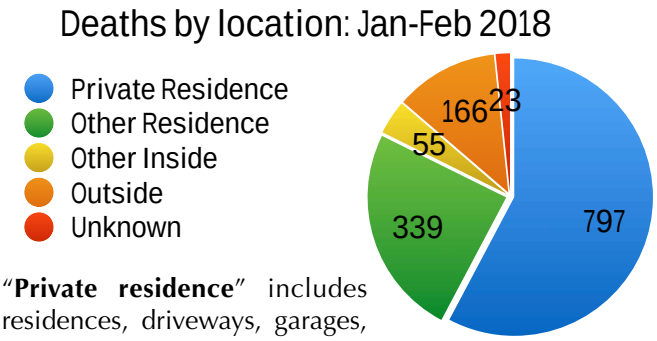
People aged 30-39 were the hardest hit so far in 2018 with **361** illicit drug overdose deaths followed by 50-59 year-olds at **322** deaths. People aged 40-49 years-old accounted for **301** deaths while those aged 19-29 had **265** deaths. Vancouver had the most deaths at **361** followed by Surrey (**195**), Victoria (**85**), Kelowna (**53**), Kamloops (**39**), Prince George (**38**) and Abbotsford (**37**).

Males continue to die at almost a **4:1** ratio compared to females. From January to September 2018, **1,109** males have died while there were **271** female deaths.





The 2018 data indicates that most illicit drug overdose deaths (**86.3%**) occurred inside while **12.0%** occurred outside. For **23** deaths, the location was unknown.



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

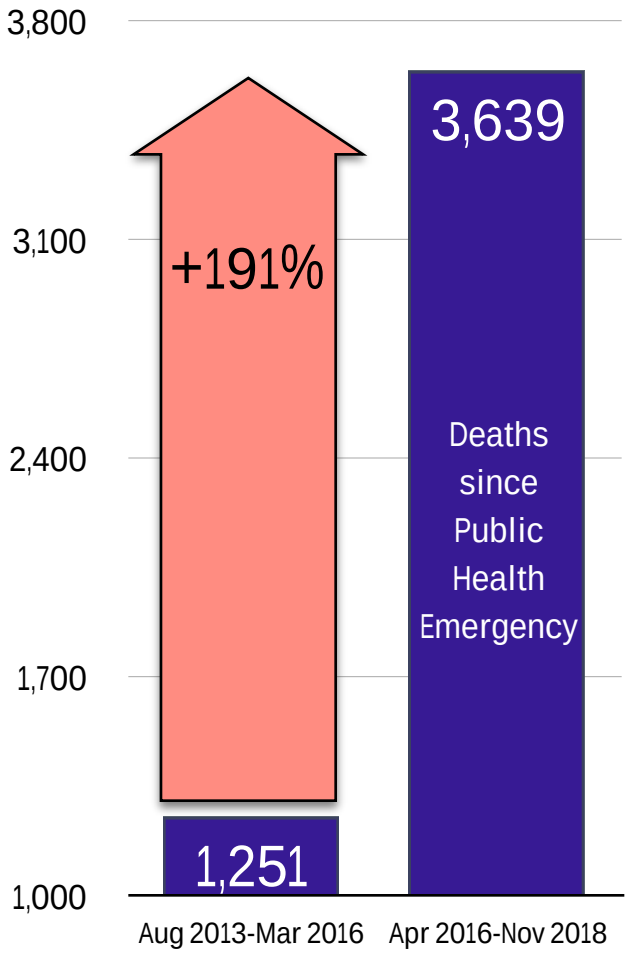
"**Other residence**" includes hotels, motels, rooming houses, shelters, etc.

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

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

DEATHS SINCE PUBLIC HEALTH EMERGENCY

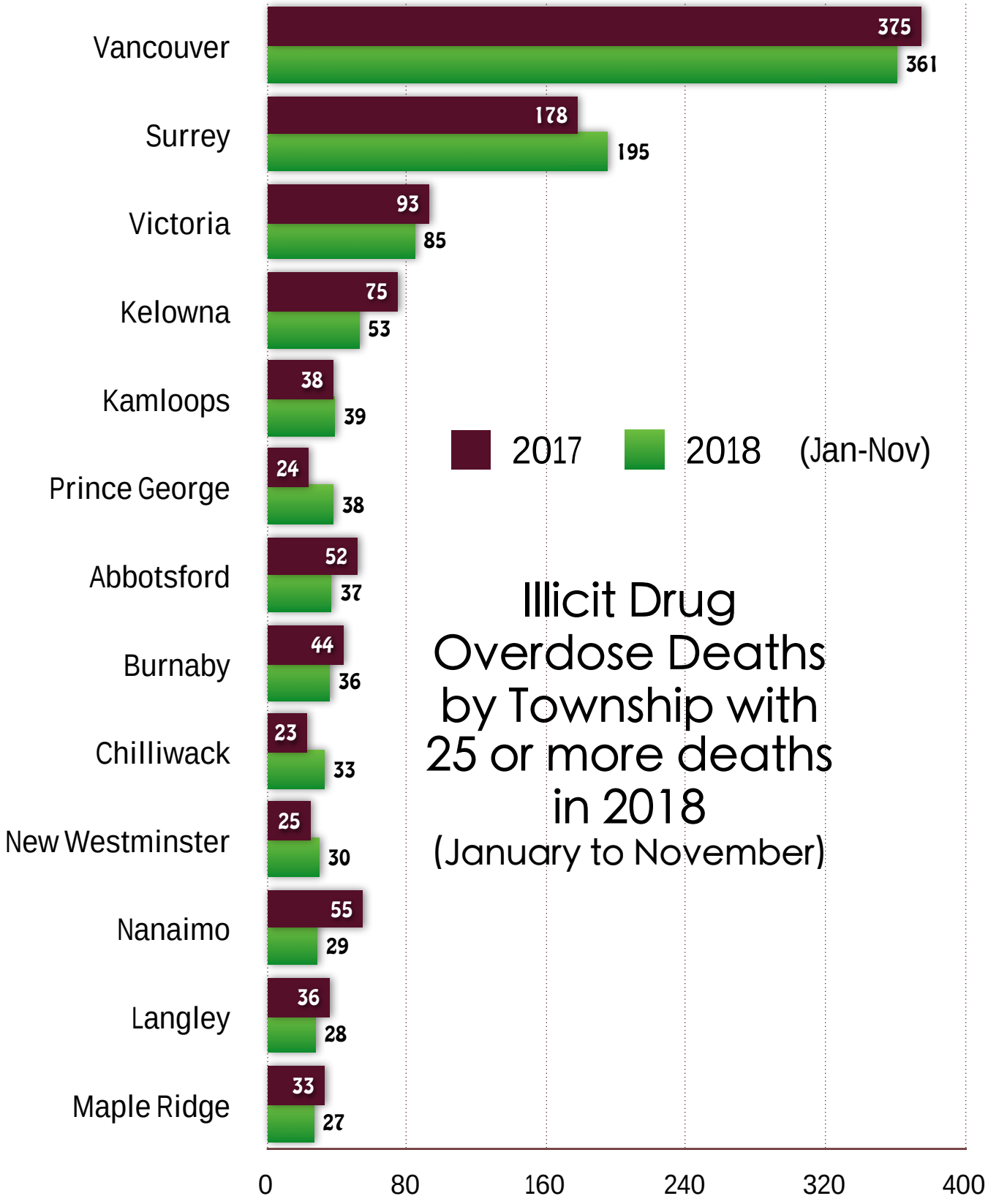
In April 2016, BC's provincial health officer declared a public health emergency in response to the rise in drug overdoses and deaths. The number of overdose deaths in the **32** months preceding the declaration (Aug 2013-Mar 2016) totaled **1,251**. The number of deaths in the **32** months following the declaration (Apr 2016-Nov 2018) totaled **3,639**. This is an increase of **191%**.



Source: Illicit Drug Overdose Deaths in BC - January 1, 2008 to November 30, 2018. Ministry of Public Safety and Solicitor General, Coroners Service. December 27, 2018.

TYPES OF DRUGS

The top five detected drugs relevant to illicit drug overdose deaths from 2016 - 2018 were fentanyl, which was detected in **78.4%** of deaths, cocaine (**48.6%**), methamphetamine/amphetamine (**31.2%**), ethyl alcohol (**25.5%**), and heroin (**21.0%**).


Vancouver
375
361
Surrey
178
195
Victoria
93
85
Kelowna
75
53
Kamloops
38
39
Prince George
24
38
Abbotsford
52
37
Burnaby
44
36
Chilliwack
23
33
New Westminster
25
30
Nanaimo
55
29
Langley
36
28
Maple Ridge
33
27
2017
2018 (Jan-Nov)
Illicit Drug Overdose Deaths by Township with 25 or more deaths in 2018
(January to November)
0
80
160
240
320
400

Illicit Drug Overdose Deaths in BC, Jan-Nov 2018

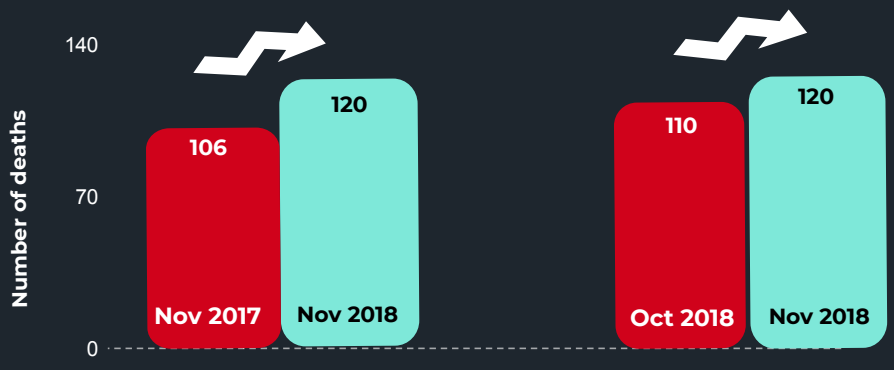
BRITISH COLUMBIA Coroners Service

120 Illicit drug overdose deaths in November 2018

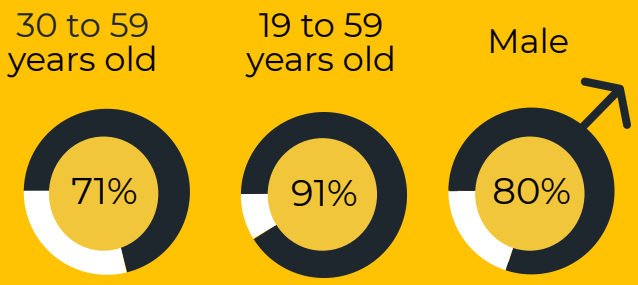
~ 4.0
illicit drug overdose deaths per DAY in November 2018

13% increase
compared to November 2017

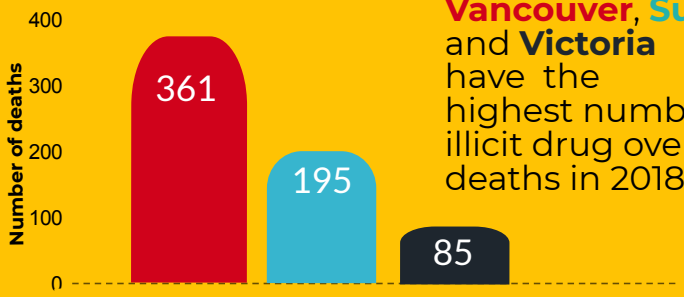
9% increase
compared to October 2018



Illicit drug overdose deaths by age group and sex, 2018



Number of illicit drug overdose deaths by city, 2018

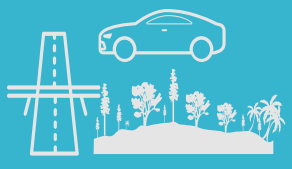


Vancouver, **Surrey** and **Victoria** have the highest number of illicit drug overdose deaths in 2018

Illicit drug overdose deaths by place of injury, 2018

58%
at private residences

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

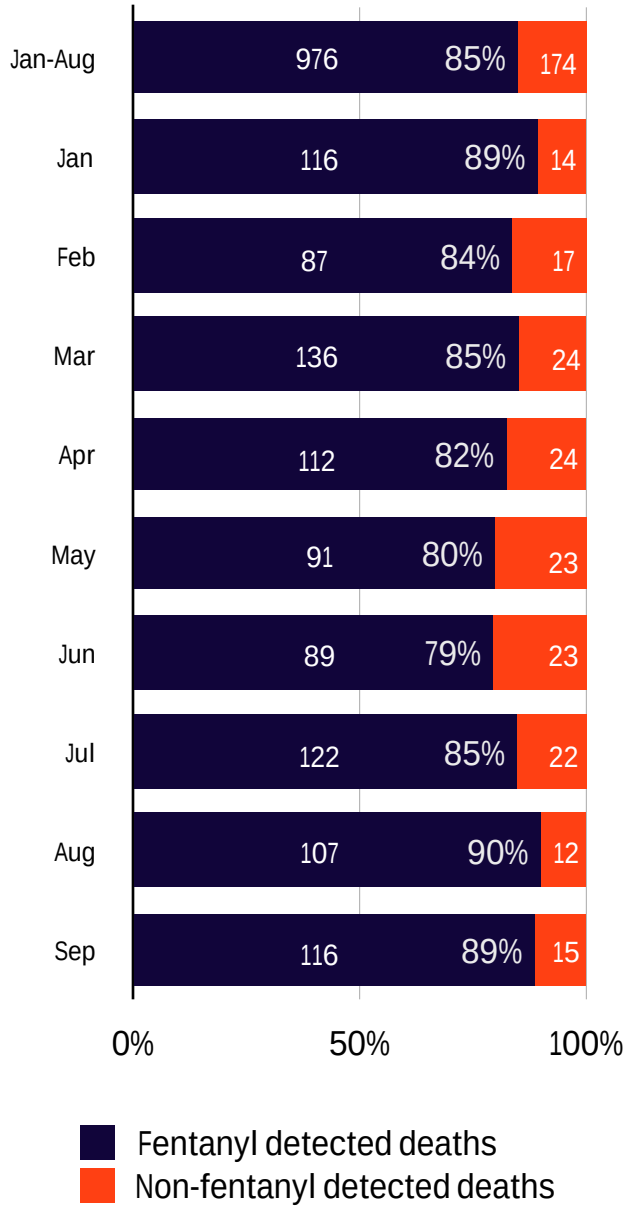


12%
at outdoor locations (e.g., parks, vehicles, streets)

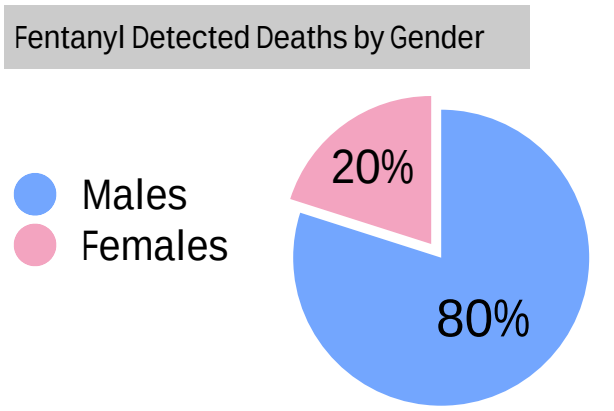
FENTANYL DETECTED DEATHS IN BC

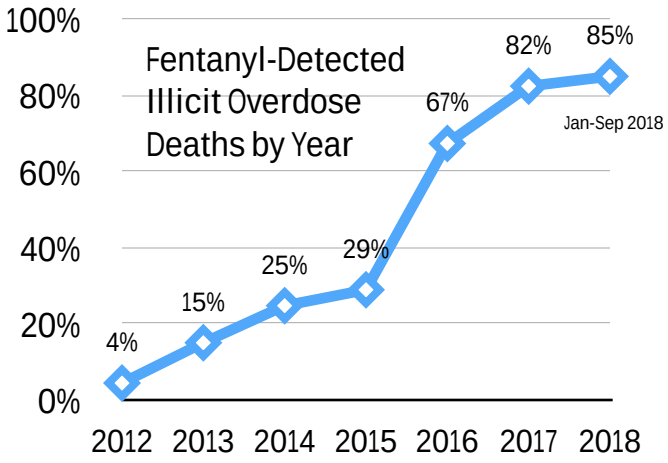
The BC Coroners Service released a report summarizing all deaths that occurred between January 1, 2012 and September 30, 2018 for which fentanyl and its analogues were detected. In the majority of cases, fentanyl or its analogues were detected in combination with other drugs.

In 2018, fentanyl or its analogues were detected in **85%** of illicit drug overdose deaths.



Like the overall illicit drug overall deaths, males continue to die at almost a **4:1** ratio compared to females in which fentanyl or its analogues were detected. From January to August 2018, **780** males died while there were **196** female deaths in which fentanyl was detected.





Source: Fentanyl-Detected Illicit Drug Overdose Deaths - January 1, 2012 to September 30, 2018. Ministry of Public Safety and Solicitor General, Coroners Service. December 27, 2018.

Source: Abbotsford Police Department

SPOUSAL PRIVILEGE DID NOT EXTEND TO TEXT MESSAGES

R. v. Cuthill, 2018 ABCA 321

With the assistance of a production order under s. 487.014 of the *Criminal Code*, the police were able to recover text messages exchanged between three accused charged with murder, including Sheena Cuthill and her husband Timothy. Unlike other major cell phone service providers, Telus retained not only information about who called or texted whom, and when, but also the actual messages. These text messages were highly incriminating and suggested a plan to kidnap and kill the victim.

At trial in the Alberta Court of Queen's Bench, the judge found that spousal communication privilege under s. 4(3) of the *Canada Evidence Act* (*CEA*) applied only to the testimony of the spouse but did not otherwise protect spousal communications themselves. The text messages were admitted and a jury went on to convict all three accused of first degree murder.

Sheena Cuthill appealed her murder conviction to the Alberta Court of Appeal, in part, by asserting that the evidence of the contents of the text messages exchanged between her and her husband were not admissible on the basis of spousal communication privilege and should have been excluded as evidence.

Text Messages & Spousal Communication Privilege

Section 4(3) of the CEA reads as follows:

> **s. 4(3) No husband is compellable to disclose any communication made to him by his wife during their marriage, and no wife is compellable to disclose any communication made to her by her husband during their marriage.**

The Court of Appeal agreed with the trial judge that spousal communication privilege did not apply to spousal communications discovered independently, for example by being overheard or contained in a letter found by another. Thus, s. 4(3) did not extend spousal communication privilege to the text messages in issue. The Appeal Court also refused Cuthill's invitation to broaden the law and extend spousal communication privilege to the text messages requiring that they be excluded from evidence. First, the Appeal Court was unwilling to ignore the clear meaning of the words used and recent jurisprudence interpreting them. Second, reading into the legislation broader protections for spousal communication privilege would exceed the Appeal Court's authority. Rather than filling a minor gap, the Court of Appeal was being asked to re-write the legislation, something they had no authority to do.

Complete case available at www.canlii.org

CROWN MUST PROVE BEYOND REASONABLE DOUBT THAT YOUTH NOT DETAINED

R. v. N.B., 2018 ONCA 556

The accused, a 16-year-old youth at the time of the offence, was convicted by a jury of first degree murder and sentenced as an adult to life imprisonment without eligibility for parole for 10 years. Statements he made to police were admitted into evidence after the trial judge found the accused had failed to meet his burden of showing that he was psychologically detained on a **balance of probabilities** to engage s. 146(2) of the *Youth Criminal Justice Act* (*YCJA*).

In his lengthy decision, Justice Pepall, authoring the Court of Appeal's unanimous judgement, analyzed the *YCJA* and addressed the standard of proof applicable to the requirements of s. 146(2). In this case, the Appeal Court ruled that the trial judge erred in reversing the burden of proof in relation to the admissibility of the accused's statements. Rather than the accused proving on a balance of probabilities that he was detained for the provisions of s. 146(2) to apply, the onus was on the Crown to prove **beyond a reasonable doubt** that the accused was not detained. The accused's appeal was allowed, his murder conviction was set aside and a new trial was ordered.

BY THE BOOK:

Youth Criminal Justice Act

s. 146 (2) No oral or written statement made by a young person who is less than eighteen years old, to a peace officer or to any other person who is, in law, a person in authority, on the arrest or detention of the young person or in circumstances where the peace officer or other person has reasonable grounds for believing that the young person has committed an offence is admissible against the young person unless

(a) The statement was voluntary;

(b) The person to whom the statement was made has, before the statement was made, clearly explained to the young person, in language appropriate to his or her age and understanding, that

  (i) the young person is under no obligation to make a statement,

  (ii) any statement made by the young person may be used as evidence in proceedings against him or her,

  (iii) the young person has the right to consult counsel and a parent or other person in accordance with paragraph (c), and

  (iv) any statement made by the young person is required to be made in the presence of counsel and any other person consulted in accordance with paragraph (c), if any, unless the young person desires otherwise;

(c) The young person has, before the statement was made, been given a reasonable opportunity to consult

  (i) with counsel, and

  (ii) with a parent or, in the absence of a parent, an adult relative or, in the absence of a parent and an adult relative, any other appropriate adult chosen by the young person, as long as that person is not a co-accused, or under investigation, in respect of the same offence; and

(d) If the young person consults a person in accordance with paragraph (c), the young person has been given a reasonable opportunity to make the statement in the presence of that person.

s. 146(2) *Youth Criminal Justice Act (YCJA)*

As a result of this decision, the following points were extracted to highlight the contours of the law relating to the admissibility of statements as it applies to young persons:

- The YCJA lays down special rules applying to all young person (12 years of age or older but less than 18 years of age).
- s. 146(2) is **exclusionary** by nature, but inclusionary by exception.
- The special protections afforded to young persons under s. 146(2) are **broader and more robust** than those afforded under s. 10(b) of the *Charter*.
- There are three preconditions to the application of the section: **arrest, detention, or reasonable grounds for believing (RGB) the young person has committed an offence**. If none of these preconditions is triggered, the police are entitled to interview youth witnesses and rely on their statements as admissible even when the informational and implementation components under s. 146(2) have not been carried out.
- If any of the three above preconditions (arrest, detention, RGB) apply, s. 146(2) then describes both informational and implementational components for admissibility of a statement.
  - ➡ **Informational** component (s. 146(2)(b)) – the police must provide the young person with a clear explanation of their rights. The test for compliance with the informational component is objective.
  - ➡ **Implementational** component (ss. 146(2)(c) and (d)) – the police must give the young person a "reasonable opportunity" to consult with counsel, and a parent or other adult. If the young person elects to consult with counsel, and/or a parent or adult, the police must provide the young person a "reasonable opportunity" to make their statement in the presence of counsel, and/or the chosen adult.

- The Crown always bears the burden of proving **beyond a reasonable doubt** the cumulative requirements of s . 146(2) for a young person's statement to be admissible. This includes the Crown proving, beyond a reasonable doubt, that:

  ➡ The statement was voluntary [s. 146(2)(a)].

  ➡ The adequacy of the statutorily mandated informational component [s. 146(2)(b)] and implementational component [s. 146(2)(c) and (d)], and the adequacy of any waiver [s. 146(4)].

  ➡ Whether the young person was not "arrested or detained" or that the peace officer did not "have reasonable grounds for believing that the young person has committed an offence".

- The "arrest or detention" need not relate to the ultimate charge the young person faces at trial in order to trigger the protections of s. 146(2). For example, if a young person is detained and not read his rights related to one offence, but then gives incriminating statements related to another offence, the police have not complied with s. 146(2) and the statements will not be admissible.

Complete case available at www.ontariocourts.on.ca

Comparing & Contrasting s. 10(b) Charter & s. 146(2) YCJA

	s. 10(b)	s. 146(2)
Trigger	• arrest or detention	• arrest, detention, or reasonable grounds for believing young person committed an offence
Informational Duty	• inform a person of their right to counsel	• inform a young person of their right to consult with a lawyer, and a parent or other adult prior to making a statement
Implementational Duty	• invoked by detainee • reasonable opportunity must be provided • there is no right to have counsel present during a police interview	• young person must waive implementational duty • young person entitled to have a lawyer and a parent or other adult present when the police take any statements from the young person
Waiver	• waiver need not be in writing nor audio or videotaped.	• any waiver of s. 146(2) rights must be audio and videotaped or written and signed by the youth
Admissibility	• presumptively admissible • accused bears burden of proof to show statement inadmissible on a balance of probabilities • s. 24(2) considers whether admission would bring the administration of justice into disrepute	• presumptively inadmissible • Crown bears burden of proof to show statement admissible beyond a reasonable doubt • s. 146(6) considers whether admission would bring into disrepute the principle that young persons are entitled enhanced procedural protections to ensure fair treatment and protection of rights • admissibility for non-compliance with s. 146(2) limited to "technical irregularity"

FIELD STRIP SEARCH UNREASONABLE, BUT EVIDENCE ADMITTED

R. v. Pilon, 2018 ONCA 959

The police obtained a warrant under the *Controlled Drugs and Substances Act* to search a motel room. When police entered the room they arrested all three of its occupants, including the accused. He resisted arrest, but was eventually handcuffed behind his back where he was seen repeatedly trying to place his hands in the front and back of his shorts. As police searched him they noticed he was wearing two pairs of shorts. They removed the outer pair of shorts and discovered a roll of cash tucked in the pocket of the inner pair of shorts. Police looked inside the second pair of shorts and discovered the accused was not wearing underwear. An officer saw the top of the accused's buttocks and an elastic band attached to his penis. The accused remained non-compliant and continued reaching inside his shorts. Believing he was attempting to hide items and concerned for safety, police took the accused to the motel bathroom and strip searched him. The accused's waistband was pulled away from his body so his genital area could be viewed. An officer, wearing surgical gloves, reached in and pulled out a pill bottle containing fentanyl patches and a ball of electrical tape with crack cocaine inside. These had been attached by an elastic band to the accused's penis.

Ontario Superior Court of Justice

The accused did not dispute the search warrant, conceded his arrest was lawful and agreed the police were searching for evidence related to his arrest. He did, however, argue that the strip search was unreasonable because the police lacked exigent circumstances to justify it be conducted in the field (not at a police station).

The judge found there were two strip searches. The first one, which did not breach s. 8 of the *Charter,* occurred when the officer pulled the accused's inner shorts away from his body and observed the elastic around the accused's penis. The judge found this was an accidental strip search – the officer did not anticipate the accused would not be wearing underwear. The search was not very intrusive, was discontinued once the elastic band tied to the accused's penis was observed, no one else saw the accused's genital area and there was no bodily contact.

As for the second strip search, it too was reasonable. Although there was no basis for police to believe that the item being concealed was a weapon, the judge concluded there were exigent circumstances that rendered the motel room strip search reasonable. There was a risk that evidence could be lost. The accused tried to dispose of drugs or otherwise prevent their detection. And there was a risk that the accused would harm himself if he was placed in a cruiser and taken to the police station. Moreover, the second strip search was conducted in a reasonable manner. It was minimally invasive, very brief, conducted in a separate room and at no time was the accused naked. Only one officer saw the accused's groin area. This officer wore gloves and, if there was any contact with the accused's genitals, it would have been fleeting and incidental to the removal of the drugs. Furthermore, the search was only conducted after the accused repeatedly refused to yield the drugs. The accused was convicted of possessing crack cocaine and fentanyl for the purpose of trafficking and he was sentenced to 30 months' imprisonment.

Ontario Court of Appeal

The accused argued that the two strip searches violated his s. 8 *Charter* rights and the trial judge erred in finding otherwise. Justice Hourigan, speaking for the Ontario Court of Appeal, agreed and concluded that the strip searches were unreasonable. In his view, the strip searches should have been conducted at the police station rather than in the field (in the motel room).

Strip Searches

A strip search has been defined by the Supreme Court of Canada in *R. v. Golden*, 2001 SCC 83 as ***"the removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person's private areas, namely genitals, buttocks, breasts (in the case of a female), or undergarments"***. Strip searches can be conducted as an incident to arrest provided:

1. they are conducted for the purpose of discovering weapons in the arrestee's possession or evidence related to the arrest,
2. the police establish reasonable grounds justifying the strip search in addition to reasonable grounds justifying the arrest and
3. the strip search is carried out in a reasonable manner.

Moreover, a strip search should be conducted at a police station unless there are exigent circumstances requiring it be conducted in the field (prior to being transported to a police station). As well, strip searches should not be carried out as a matter of routine nor does an arrestee's non-cooperation and resistance necessarily entitle the police to engage in behaviour that disregards or compromises the arrestee's physical or psychological integrity and safety. A series of guidelines are also to be considered in determining whether a strip search is conducted in a reasonable manner.

In this case, the Ontario Court of Appeal found both strip searches to be constitutionally non-compliant. As for the ***first strip search***, it was not accidental. Although the officer did not anticipate that the accused would not be wearing underwear, a strip search is defined as including the rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person's undergarments. Hence, when the accused's waistband was pulled back in an effort to view his underwear, he was strip searched. The police, however, failed to establish that there were exigent circumstances that justified this field strip search on safety grounds or the need to preserve evidence. ***"[The officer] testified that he observed the [accused] attempting to reach into the waistband of his shorts,"*** said Justice Hourigan. ***"Although he did not know what the [accused] was reaching for, it does not appear that his concerns were safety related. Instead, he had a hunch, based on prior investigations, that the [accused] was carrying drugs in his groin area. However, [the officer] did not attempt to justify the first strip search on the basis that there was a real possibility that evidence would be destroyed."***

As for the ***second strip search***, it too failed the reasonableness test. There were no exigent circumstances, either to a risk of the loss of evidence or a need to protect safety, that warranted a strip search in the field:

- **Preservation of Evidence:** Justice Hourigan concluded there were no exigent circumstances related to destruction of evidence. The accused ***"was in a confined space, handcuffed, and surrounded by police officers. If he somehow was able to dispose of the drugs undetected, it is a common sense inference that they would be easily retrievable by the police. Further, there would be strong circumstantial evidence that the [accused] was in possession of the drugs."***

- **Safety Concerns:** Since there was nothing to lead the officers to believe the object attached to the accused's penis was a weapon, there were no exigent circumstances that justified a search for a weapon in the field. Nor did, as the trial judge found, the accused's ongoing efforts to gain access to what was hidden in his shorts and his level of physical resistance create a risk that he would harm himself if he was placed in a cruiser and taken to the police station for a strip search. ***"The difficulty in transporting the [accused] is not causally connected to, let alone resolved by, the police conducting a strip search in the motel room,"*** said Justice Hourigan. ***"The [accused] had been defiant and physically uncooperative from the moment the police entered the motel room. There was no basis for the police to speculate or the trial judge to conclude that the [accused] would***

become compliant if the strip search was conducted at the motel room. The police were still required to transport the [accused] to the police station after the strip search was conducted."

Admissibility Analysis

Although the Court of Appeal held that both strip searches breached s. 8 of the *Charter* because the police failed to establish exigent circumstances justifying field searches, the evidence was nevertheless admitted under s. 24(2). The police acted in good faith. There was no evidence the searches were routine practice and, had the strip searches been conducted at the police station, they would have been reasonable. ***"Other than location, they were textbook examples of how strip searches should be conducted,"*** said the Court of Appeal. Furthermore, the evidence was highly reliable and the charges were very serious.

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

Complete case available at www.ontariocourts.on.ca

***R. v. Golden**, 2001 SCC 83*

1. Can the strip search be conducted at the police station and, if not, why not?
2. Will the strip search be conducted in a manner that ensures the health and safety of all involved?
3. Will the strip search be authorized by a police officer acting in a supervisory capacity?
4. Has it been ensured that the police officer(s) carrying out the strip search are of the same gender as the individual being searched?
5. Will the number of police officers involved in the search be no more than is reasonably necessary in the circumstances?
6. What is the minimum of force necessary to conduct the strip search?
7. Will the strip search be carried out in a private area such that no one other than the individuals engaged in the search can observe the search?
8. Will the strip search be conducted as quickly as possible and in a way that ensures that the person is not completely undressed at any one time?
9. Will the strip search involve only a visual inspection of the arrestee's genital and anal areas without any physical contact?
10. If the visual inspection reveals the presence of a weapon or evidence in a body cavity (not including the mouth), will the detainee be given the option of removing the object himself or of having the object removed by a trained medical professional?
11. Will a proper record be kept of the reasons for and the manner in which the strip search was conducted?

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February 8, 2019
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E-COMM RELEASES ITS 2018 TOP 10 LIST OF 911 CALLS

E-Comm (Emergency Communications for British Columbia Incorporated), BC’s 911 call centre and integrated dispatch services for police agencies and fire departments, has released its 2018 annual top 10 list of reasons not to call 911.

1. **To complain a local fast food restaurant wasn’t open 24-hours-a-day, as advertised.**
2. **To complain a store won’t take shoes back without the original box.**
3. **To complain that a gas station attendant put the wrong type of gas in their car.**
4. **To report a rental company provided the wrong-sized vehicle for a customer’s reservation.**
5. **To report a restaurant wouldn’t redeem a customer’s coupon.**
6. **To ask for help turning off their car lights.**
7. **To report their vehicle’s windshield wipers had stopped working.**
8. **To find out where their car had been towed.**
9. **To report a lost jacket.**
10. **To ask if the clocks move forward or backward during the spring time change.**

Source: E-Comm 911

SEX ASSAULTS RISE AFTER #MeToo

According to a recent Statistics Canada report, sexual assaults reports to police that involved an accused known to the victim increased after #MeToo went viral in October 2017. During the post #MeToo period from October 1 - December 31, 2017 there were 6,766 victims of sexual assault incidents reported to police and deemed founded. This represented an average of 74 sexual assault victims reporting to police per day. Before #MeToo there were only an average of 59 sexual assault victims reporting to police per day. This represents an increase of **25%**.

In total, 2017 represented the most sexual assault reports since 1998.

VICTIMS OF POLICE-REPORTED SEXUAL ASSAULT BY QUARTERLY PERIOD

Province/ Territory	Pre-#MeToo Avg. Rate	Post-#MeToo Avg. Rate	% Change
QC	12.4	20.0	61%
NL	14.5	19.8	36%
MB	26.0	33.0	27%
ON	14.2	16.9	19%
BC	12.9	15.0	16%
NS	18.0	20.6	15%
NB	12.3	13.4	9%
NU	104.8	113.2	8%
AB	16.8	17.9	7%
PEI	12.2	12.6	3%
SK	25.3	25.5	1%
NWT	87.7	78.8	-10%
YK	50.6	41.7	-18%

Rate is based on 100,000 annual population.

VICTIMS OF POLICE-REPORTED SEXUAL ASSAULT BY QUARTERLY PERIOD

CMA	Pre-#MeToo Avg. Rate	Post-#MeToo Avg. Rate	% Change
Quebec City, QC	11.7	20.8	78%
Sherbrooke, QC	15.1	26.5	76%
Brantford, ON	17.0	29.9	76%
Saguenay, QC	12.9	21.8	69%
Montreal, QC	12.0	20.0	67%
London, ON	13.0	21.2	63%
Kingston, ON	18.5	29.7	61%
Peterborough, ON	23.0	36.3	58%
Kitchener-Cambridge-Waterloo, ON	14.7	22.3	52%
Ottawa, ON	14.5	21.2	46%
Gatineau, QC	12.3	17.7	44%
Guelph, ON	18.8	26.0	39%
Greater Sudbury, ON	16.5	22.6	37%
St. John's, NL	16.2	20.8	28%
Winnipeg, MB	24.0	30.3	26%
Vancouver, BC	11.1	14.0	26%
All CMAs	13.7	17.7	29%

Rate is based on 100,000 annual population.

Source: Police-reported sexual assaults in Canada before and after #MeToo, 2016 and 2017. Juristat. Statistics Canada. Catalogue no. 85-002-X. https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54980-eng.htm [accessed December 21, 2018]

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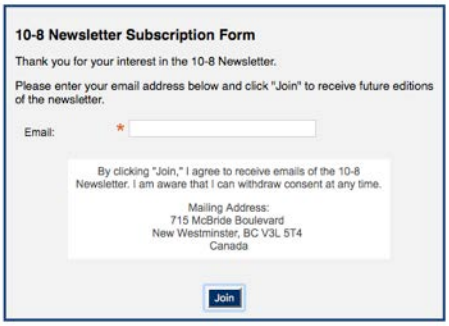

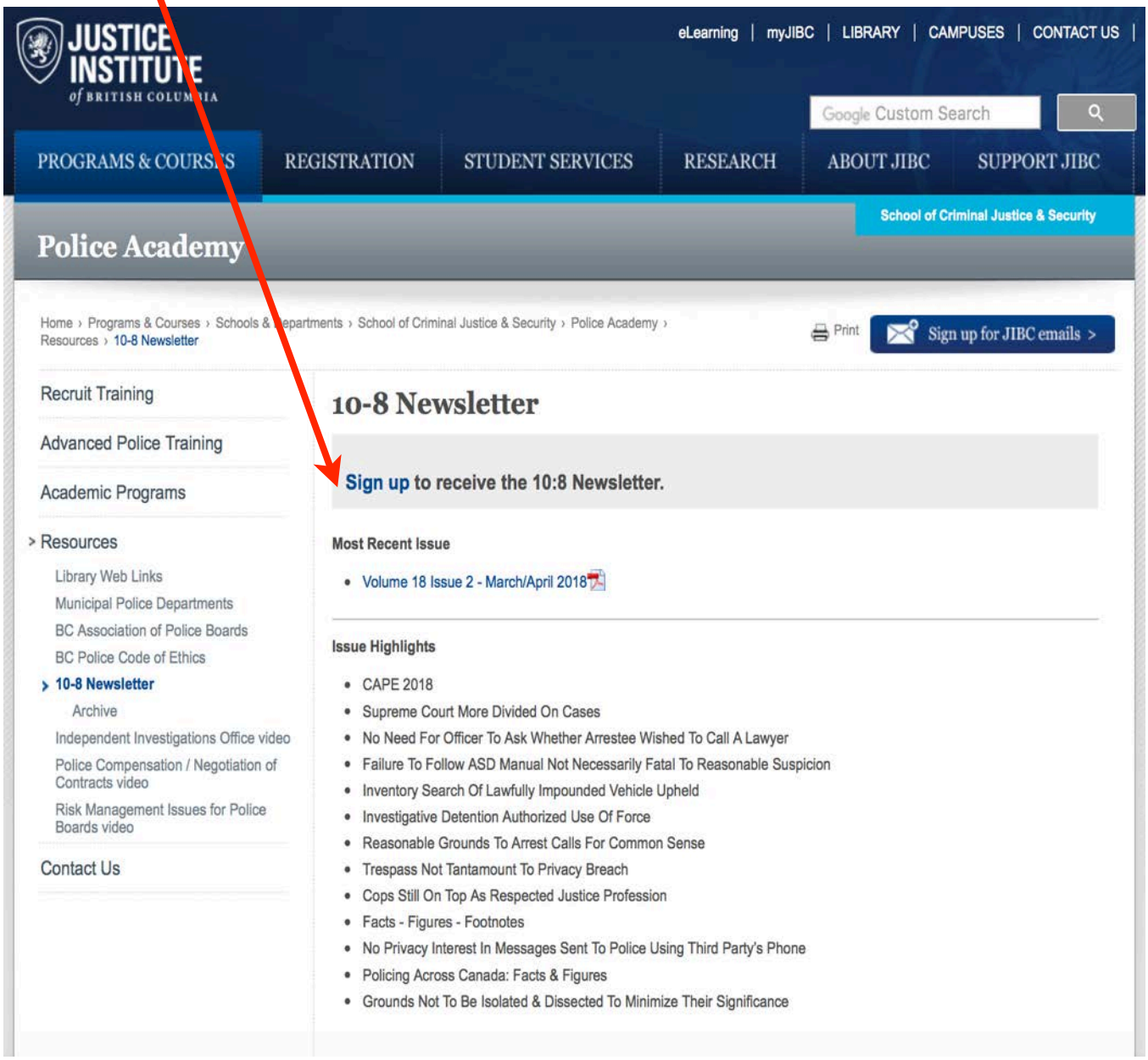

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February 11-15, 2019
Enhanced Investigative Interviewing (INVE-1004)

February 25-27, 2019
Report Writing for Professional Investigators (INVE-1005)

March 6-20, 2019
Introduction to Administrative Law (INVE-1002)

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