JUSTICE INSTITUTE of BRITISH COLUMBIA

IN SERVICE: 10-8

A PEER READ PUBLICATION

Upcoming Seminar

INVESTIGATIVE INTERACTIONS

Stops, Searches & Statements See p. 3

CANADA SEES DECLINE IN HOMICIDE RATE

Statistics Canada has released the homicide numbers for 2018. Last year, police reported **651** homicide victims in Canada. This was a decrease of **15** victims from 2017. The homicide rate per 100,000 population was **1.76**, down **3.62%** from 2017.

The most substantial year-over-year increase occurred in Ontario (**+69**). Alberta (**-38**) and BC (**-30**) reported the largest declines.

PROVINCIAL HOMICIDE VICTIMS

Province	2018	2017	+/-	% Change
BC	89	119	-30	-33.7%
QC	83	93	-10	-12.0%
NS	11	21	-10	-90.9%
MB	55	47	8	14.5%
NU	8	6	2	25.0%
YT	3	8	-5	-166.7%
AB	81	119	-38	-46.9%
PEI	0	2	-2	0%
NB	13	10	3	23.1%
NWT	6	2	4	66.7%
NL	2	4	-2	-100.0%
ON	266	197	69	25.9%
SK	34	38	-4	-11.8%

More at p. 4

Highlights In This Issue

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Advanced Police Training at the Justice Institute of BC

Looking to refresh or develop your current skills? 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: September 16-20
- ☑ **Interviewing Special Needs Witnesses** @ New West Campus: September 18-20
- ☑ **Advanced Tactical Surveillance** @ New West Campus: September 23-26
- ☑ **Search & Seizure** @ New West Campus: September 23-27
- ☑ **Coaching and Mentoring** @ Victoria Campus: September 25-27
- ☑ **Police Leadership Development** @ Victoria Campus: September 30-October 4
- ☑ **Search & Seizure** @ Victoria Campus: September 30-October 4

Advanced Police Training Contact Information

advancedpolicetraining@jibc.ca

604-528-5761

2019 Course Calendar here

JUSTICE INSTITUTE of BRITISH COLUMBIA | POLICE ACADEMY

INVESTIGATIVE INTERACTIONS: Stops, Searches & Statements

Law enforcement officers must understand the ever-changing legal landscape under which they carry out their duties on a daily basis. Police encounters with the public range from casual contacts through detention to arrest. Searches attaching to these encounters run the gamut from none at all, through pat-downs to penal swabs. A failure to appreciate and correctly apply the law in these areas can lead to serious consequences, including criminal sanctions against individual officers, the exclusion of evidence and disciplinary action. Criminals can walk free and officers become frustrated by the process. This seminar will provide officers with a solid foundation in the principles of police powers in these areas

Topics include:

- Significant Supreme Court of Canada judgments.
- Types of police/citizen encounters.
- Continuum of suspicion.
- Vehicle stops.
- Investigative detention.
- Pat downs & frisks.
- Arrest & search.
- Right to counsel.
- K-9 sniffs.
- and much more.

Date:
October 8, 2019
9:00 am – 3:00 pm

Location:
JIBC Theatre
715 McBride Boulevard
New Westminster, BC

How to Register:
Email: Karlo Avenido kavenido@jibc.ca or contact your Training Section to register through eCourse.

Registration Fee:
$100 (plus GST)

Restricted to law enforcement officers.

For more information:
Email: Advanced Police Training Manager Nancy Jolin njolin@jibc.ca

Instructor: Mike Novakowski (M.O.M., M.A., L.L.M.) is a serving police officer and member of the Canadian Association of Law Teachers. He has a Master of Arts degree in Leadership and Training and a Master of Laws degree from Osgoode Hall Law School specializing in Criminal Law and Procedure. He is a former JIBC Police Academy legal studies instructor, has taught several advanced police training courses and is currently a sessional instructor at UFV in the School of Criminology and Criminal Justice. Mike is the author and editor of "In Service: 10-8", a peer read newsletter devoted to operational police officers in Canada, and the case law editor for Blue Line magazine. Mike's law degree, experience as a police officer and passion for teaching gives him a unique perspective to present an exciting seminar that is a must see for all police officers.

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.

Biased: uncovering the hidden prejudice that shapes what we see, think, and do.
Jennifer L. Eberhardt, PhD.
New York, NY: Viking, an imprint of Penguin Random House LLC, 2019.
BF 575 P9 E34 2019

The change makers: 25 leaders in their own words.
Shaun Carney.
Carlton, Victoria: Melbourne University Press, 2019.
HM 1261 C37 2019

The Chicago manual of style.
Chicago, IL: The University of Chicago Press, 2017.
PE 1408 C455 2017

The disaster survival guide: how to prepare for and survive floods, fires, earthquakes, and more.
Marie D. Jones.
Canton, MI: Visible Ink Press, 2018.
GF 86 J664 2018

A history of law in Canada: volume 1: beginnings to 1866.
Philip Girard, Jim Phillips & R. Blake Brown.
Toronto, ON; Buffalo, NY; London: Published for The Osgoode Society for Canadian Legal History by University of Toronto Press, 2019.
KE 394 G57 2019

In command of guardians: executive servant leadership for the community of responders.
Eric J. Russell.
Cham, Switzerland : Springer, 2019.
HM 1261 R87 2019

Nine lies about work: a freethinking leader's guide to the real world.
Marcus Buckingham, Ashley Goodall.
Boston, MA: Harvard Business Review Press, 2019.
HD 58.9 B84 2019

No hard feelings: emotions at work (and how they help us succeed).
Liz Fosslien & Mollie West Duffy.
London, UK: Penguin Business, 2019.
HF 5548.8 F67 2019

No visible bruises: what we don't know about domestic violence can kill us.
Rachel Louise Snyder.
New York, NY: Bloomsbury Publishing Inc., 2019.
HV 6626.2 S59 2019

The power of apology: healing steps to transform all your relationships.
Beverly Engel.
New York, NY: J. Wiley, 2001.
BF 575 A75 E54 2001

Powerhouse: 13 teamwork tactics that build excellence and unrivalled success.
Kristine Lilly & John Gillis.
Austin, TX: Greenleaf Book Group Press, 2019.
HD 66 L55 2019

Stop talking, start influencing: 12 insights from brain science to make your message stick.
Jared Cooney Horvath, PhD, MEd.
Chatswood, NSW : Exisle Publishing, 2019.
BF 774 H67 2019

Until we reckon: violence, mass incarceration, and a road to repair.
Danielle Sered.
New York, NY: The New Press, 2019.
HV 8688 S47 2019

Workplace health and safety crimes.
Norm Keith.
Toronto, ON: LexisNexis Canada, 2019.
KE 3365 K45 2019

SHARE IT. DON'T WEAR IT.

IT'S TIME TO SPEAK UP ABOUT MENTAL HEALTH.

AMBULANCE PARAMEDICS OF BRITISH COLUMBIA | BC EMERGENCY HEALTH SERVICES | BC MUNICIPAL CHIEFS OF POLICE | BRITISH COLUMBIA POLICE ASSOCIATION | BRITISH COLUMBIA PROFESSIONAL FIRE FIGHTERS ASSOCIATION | CANADA BORDER SERVICES AGENCY | FIRE CHIEFS' ASSOCIATION OF BC | FIRST NATIONS EMERGENCY SERVICES SOCIETY OF BRITISH COLUMBIA | GREATER VANCOUVER FIRE CHIEFS ASSOCIATION | PROVINCE OF BC | ROYAL CANADIAN MOUNTED POLICE | TRANSIT POLICE | VOLUNTEER FIREFIGHTERS ASSOCIATION OF BC | WORKSAFEBC

BCFirstRespondersMentalHealth.com

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.

www.BCFirstRespondersMentalHealth.com

Homicide Rates

The Census Metropolitan Area (CMA) of Thunder Bay, ON had the highest homicide rate of all CMAs at **6.38** homicides per 100,000 people. This was followed by Brantford, ON (**3.36**), Regina, SK (**3.10**) and Abbotsford-Mission, BC (**3.07**). The average non-CMA homicide rate was **1.98** while Canada's overall rate was **1.76**.

2018 HOMICIDE RATES - Select CMAs

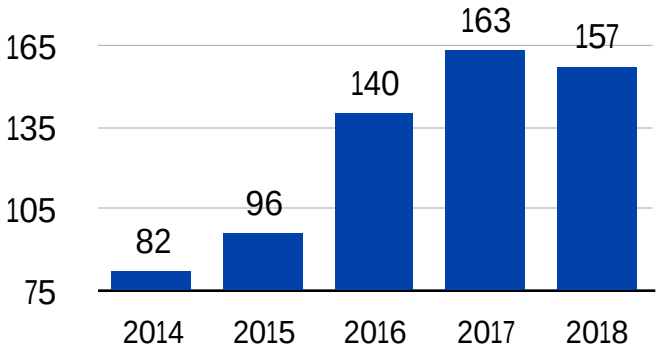
CMA	Rate	Homicides		
		2018	2017	Change
Thunder Bay, ON	6.38	8	7	+1
Brantford, ON	3.36	5	5	0
Regina, SK	3.10	8	9	-1
Abbotsford-Mission, BC	3.07	6	9	-3
Windsor, ON	2.86	10	3	+7
Winnipeg, MB	2.69	22	24	-2
Edmonton, AB	2.60	37	49	-12
Saskatoon, SK	2.44	8	5	+3
Toronto, ON	2.26	142	93	+49
Sherbrooke, QC	1.97	4	1	+3
Non-CMAs	1.98	210	238	-28
Canada	1.76	651	666	-15

Gang-Related Homicides

Gang-related homicides dropped to **157** in 2018, down **6** from 2017, and accounted for **24%** of all homicides. The largest increases of gang-related homicides occurred in Quebec (**+17**) and Ontario (**+3**). Overall, Ontario and Quebec numbers accounted for **53%** of all gang-related homicides.

Quebec had the highest proportion of gang-related homicides at **38.6%** of the province's total. BC followed at **37.1%**, Alberta at **27.2%** and Saskatchewan at **23.5%**.

GANG-RELATED HOMICIDES BY YEAR



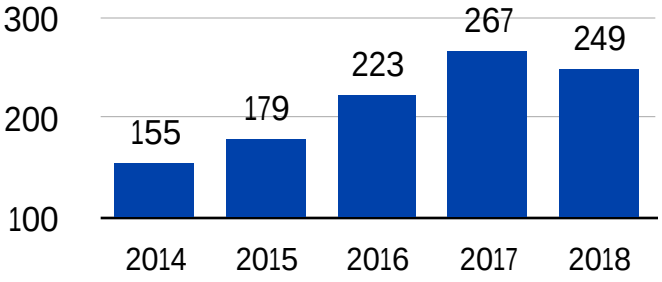
2018 GANG-RELATED HOMICIDES

Area	Total Homicides	Gang-Related	%	Rate
BC	89	33	37.1%	0.66
AB	81	22	27.2%	0.51
SK	34	8	23.5%	0.69
MB	55	5	9.1%	0.52
ON	266	51	19.2%	0.36
QC	83	32	38.6%	0.38
Atlantic	26	4	15.4%	0.17
Territories	17	0	0.0%	0.00
Canada	651	157	24.1%	0.42

Firearm-Related Homicides

There were **249** firearm-related homicides (**38.2%** of all homicides) reported in Canada in 2018, **18** less than in 2017.

FIREARM-RELATED HOMICIDES



2018 FIREARM-RELATED HOMICIDES BY TYPE	
FIREARM TYPE	Number
Handgun	143
Rifle or Shotgun	56
Sawed-off Rifle or Shotgun	18
Fully Automatic Firearm	2
Other Firearm-Type Unknown	30
TOTAL	249

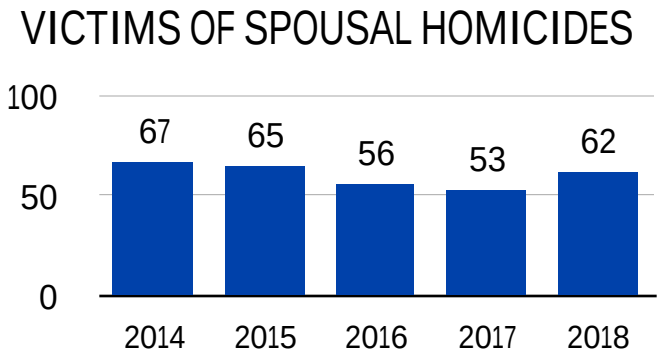
Other Methods of Death

Of the 2018 homicides in which a cause of death was identified, **28.1%** of homicide victims were stabbed, **18.3%** were beaten, and **5.5%** were strangled. Other causes of death included shaken baby syndrome, poisoning, exposure or hypothermia, fire (eg. smoke inhalation or burns) and by motor vehicle.

HOMICIDES BY METHOD		
Method	Number	%
Shooting	249	38.2%
Stabbing	183	28.1%
Beating	119	18.3%
Strangulation	36	5.5%
Fire (burns/suffocation)	9	1.4%
Other methods	29	4.5%
Method unknown	26	4.0%
TOTAL	651	100%

Spousal Homicide

Of the 2018 homicides in which a relationship was determined, **62** people were identified as the victim of a spousal homicide. Ontario had the most spousal homicides at **21** while Quebec had the least at **3**.



2018 SPOUSAL HOMICIDES			
Area	Total Homicides	Spousal	%
BC	89	5	5.6%
AB	81	9	11.1%
SK	34	5	14.7%
MB	55	9	16.4%
ON	266	21	7.9%
QC	83	3	3.6%
Atlantic	26	4	15.4%
Territories	17	6	35.3%
Canada	651	62	9.5%

Notes:

- Atlantic Region includes Newfoundland and Labrador, Prince Edward Island, Nova Scotia and New Brunswick.
- Territories include Yukon, Northwest Territories and Nunavut.

Source: Homicide Survey. Data Release July 22, 2019. [accessed August 23, 2019]

FIREARMS REGULATIONS CONSIDERED IN UNSAFE STORAGE CHARGE

R. v. Williams, 2019 NBCA 51

During a large scale police investigation into drug trafficking dubbed Operation J-Tornado, the accused's home was searched under a warrant. At the time of the search, the accused was residing in the home with his wife and their two children, then aged five and eight. Police found the following:

- Master Bedroom
  - on top of a night table - a locked gun vault case containing a loaded .45 calibre handgun without a trigger lock along with a second loaded magazine. A key to the case was in a nearby drawer.

  - on the floor near the night table - a box containing 10 full boxes of Winchester .45 calibre ammunition.
  - walk-in closet - a locked large metal gun cabinet. The key was found under some clothing on a shelf above the cabinet. Inside the cabinet were a loaded semi-automatic rifle and a loaded shotgun. Neither had a trigger lock.

- Main Floor Living Room
  - hidden inside a coffee table - a gun vault case containing a loaded .45 calibre handgun without a trigger lock along with a second loaded magazine.
  - on top of a stereo speaker - a loaded magazine containing .45 calibre ammunition.

- Kitchen
  - on a counter near a toaster - a loaded magazine.

BY THE BOOK:

s. 86 *Criminal Code*

Careless use of firearm, etc.

s. 86 (1) Every person commits an offence who, without lawful excuse, uses, carries, handles, ships, transports or stores a firearm, a prohibited weapon, a restricted weapon, a prohibited device or any ammunition or prohibited ammunition in a careless manner or without reasonable precautions for the safety of other persons.

Contravention of storage regulations, etc.

s. 86(2) Every person commits an offence who contravenes a regulation made under paragraph 117(h) of the Firearms Act respecting the storage, handling, transportation, shipping, display, advertising and mail-order sales of firearms and restricted weapons.

The accused had acquired all the firearms and ammunition legally, and possessed the proper authorizations and permits. The accused was nevertheless charged with two counts of carless storage of firearms and ammunition under s. 86(1) of the *Criminal Code*.

New Brunswick Provincial Court

The trial judge referred to the *Storage, Display, Transportation and Handling of Firearms by Individuals Regulations* to inform his analysis of what Parliament considered unsafe with respect to the storage of firearms and ammunition under s. 86(1). The judge concluded ***"that the storage of [the accused's] firearms and ammunition fell below the standard of care required to ensure that no person is endangered by the firearms and ammunition in question."*** He stated:

> In my view, the defendant himself was a knowledgeable and experienced gun owner and should have known that his storage of these items was not acceptable or prudent in

> the circumstances, especially in the family home with young children present. For these reasons I find there has been a marked departure from the standard of care of a reasonably prudent person in these circumstances and that the Crown has proven all the essential elements of the counts […] beyond a reasonable doubt and I find the defendant guilty thereof.

The accused was convicted of the unsafe storage charges under s. 86(1).

New Brunswick Court of Appeal

The accused challenged his s. 86(1) convictions arguing that it was unreasonable for the trial judge to find the storage of his firearms and ammunition to be unsafe. He submitted that there was nothing unsafe about the manner in which he stored his firearms and ammunition. Among other things, he contended that it was sufficient that the gun vault cases and the gun cabinet were kept locked (in spite of the keys being kept in close proximity and relatively easy to find). He also posited that ammunition is not unsafe and only presents a safety concern once it is loaded in a firearm.

Although the trial judge did refer to the *Storage, Display, Transportation and Handling of Firearms by Individuals Regulations* in finding the accused guilty under s. 86(1), he did not enter a conviction based only on non-compliance with the regulations under s. 86(2). Rather, he merely considered the *Regulations* to assist in his analysis of whether the accused had contravened s. 86(1). Justice Green, delivering the Court of Appeal's decision, concluded the trial judge did not err in finding the conduct of the accused showed "***a marked departure from the standard of care of a reasonably prudent person.***"

The accused's appeal was dismissed.

Complete case available at www.canlii.org

PUBLIC INTEREST SERVED BY DETERRING BAD DRIVING BEHAVIOUR

McEachern v. British Columbia (Superintendent of Motor Vehicles), 2019 BCCA 195

A 17-year-old novice driver was issued a violation ticket for using an electronic device while driving, contrary to s. 30.072(1)(a) of BC's *Motor Vehicle Act* (*MVA*) Regulations. Novice drivers are subject to the province's Graduated Licensing Program (GLP), under which drivers are closely monitored and are subject to a lower threshold for intervention by the Superintendent of Motor Vehicles. The driver disputed the ticket but was convicted. She had no other infractions on her driving record.

Superintendent's Decision

Two weeks after her conviction, the Superintendent notified the driver of an intention to prohibit her for a period of three months due to her unsatisfactory driving record. She applied for a review of the notice which was upheld, but the prohibition period was reduced from three months to two by the reviewing officer:

> Your driving record indicates that you received an offence for use electronic device while driving on September 17, 2016. Please be advised that use electronic device while driving offences are a serious public safety concern and are now one of the leading causes of motor vehicle related fatalities in BC. Drivers in the Graduated Licensing Program (GLP) have significantly higher accident rates than more experienced drivers. When a GLP driver commits driving infractions this risk increases.
>
> I have considered your legal representative's written submission, and reviewed your driving record. While I cannot ignore your driving behaviour, I have given some weight to your personal circumstances; therefore, I have decided to reduce the term of your prohibition from driving from three months to two months.

"It is true that a driving prohibition imposed under s. 93(1)(a)(ii) is predicated upon a connection between an unsatisfactory driving record and the public interest. However, nowhere does the statute suggest that the public interest is limited to prohibiting only drivers considered to be dangerous or potentially dangerous. The public interest may be served not only by keeping potentially dangerous drivers off the road but also by deterring poor driving behaviour, especially in respect of new drivers.

British Columbia Supreme Court

The driver appealed the reviewing officer's decision under s. 94. The judge allowed the appeal and revoked the prohibition, holding that a single infraction could not reasonably justify a prohibition under s. 93(1)(a)(ii). The judge found the prohibition was upheld solely on the basis of the driver's driving record, which contained only a single entry, and no other evidence was considered in determining whether there was a need to protect the public. As such, the judge ruled the reviewing officer's decision was unreasonable. The driver's appeal was allowed and the Superintendent was ordered to terminate the prohibition.

British Columbia Court of Appeal

The Superintendent argued that the Supreme Court judge erred in concluding that a single violation ticket could not support the imposition of a driving prohibition under s. 93(1)(a)(ii) and in finding that the decision to do so was unreasonable.

s. 93(1)(a)(ii)

Under s. 93(1)(a)(ii) of the *MVA*, the Superintendent is granted discretion to prohibit a person from driving. The provision read as follows:

> *s. 93 (1) Even though a person is or may be subject to another prohibition from driving, if the superintendent considers it to be in the public interest, the superintendent may, with or without a hearing, prohibit the person from driving a motor vehicle (a) if the person … (ii) has a driving record that in the opinion of the superintendent is unsatisfactory …*

Under s. 93(2), the Superintendent may consider **"all or any part of the person's driving record"** in forming an opinion as to whether that driving record is unsatisfactory.

The Court of Appeal concluded that the judge was wrong in concluding that s. 93(1)(a)(ii) did not permit the imposition of a driving prohibition for a single infraction. There is no need that a driving record reflect ***"a pattern of conduct that may continue and pose a danger to the public"*** and therefore show that the individual was ***"a dangerous driver who might put the safety of the public at risk"***. Justice Fisher stated:

> It is true that a driving prohibition imposed under s. 93(1)(a)(ii) is predicated upon a connection between an unsatisfactory driving record and the public interest. However, nowhere does the statute suggest that the public interest is limited to prohibiting only drivers considered to be dangerous or potentially dangerous. The public interest may be served not only by keeping potentially dangerous drivers off the road but also by deterring poor driving behaviour, especially in respect of new drivers. [para. 27]

And further:

> … I agree with the submission of the Superintendent that the public interest purpose in s. 93(1)(a)(ii) may be fulfilled by an interpretation that permits intervention before a driver engages in a pattern of dangerous driving behaviour. Whether one infraction is sufficiently serious to warrant the Superintendent's intervention will depend on the circumstances of the case. [para. 31]

In this case, the Superintendent considered more than the "single infraction" but rather the infraction in the context of the driver's entire driving record: Justice Fisher wrote:

> The undisputed facts in this case are that Ms. McEachern, while holding a Class 7 driver's license, used an electronic device while driving, contrary to s. 30.072(1)(a) of the Regulations. Using an electronic device while driving is considered serious enough by the Superintendent that this regulation creates a condition that is attached to a Class 7 license and it is listed on Ms. McEachern's license as a "restriction/endorsement". The violation resulted in four penalty points registered on Ms. McEachern's driving record. [para. 40]

The Superintendent deserved deference in his decision. While the Superintendent may have been described as harsh and he could have imposed a lesser intervention, it fell within a range of possible, acceptable outcomes and was not unreasonable.

Complete case available at www.canlii.org

CONVICTION FOR ASSAULT PEACE OFFICER BY SPITTING UPHELD

R. v. Hominuk, 2019 MBCA 64

The accused, a correctional inmate, tried to choke herself with a piece of ripped bedding. Correctional officers unsuccessfully attempted to restrain her with hand and leg cuffs. She actively resisted, yelled and refused to obey the officers' directions to calm down. As the officers were placing her in a restraint chair, the accused spat several feet above the heads of the officers. However, her spit landed on the face of an officer who was trying to restrain her.

Manitoba Provincial Court

The judge rejected the accused's evidence that she did not intend to spit on the officers but, rather, into the air with the intent that the spit would fall back on her. She testified that she did not recall why she was trying to choke herself, and that she panicked and actively resisted officers when they came into her cell because she did not want to be restrained. She said that, during the course of being restrained, she had phlegm in her throat and was choking and that is why she spat.

Although the judge found the accused was (a) hysterical and out of control at the time of the offence; (b) could not have known what was going on at the time of the offence due to her state of mind; (c) was unable to apply reason to her thoughts or actions at the time of the offence; and (d) did not intend to hit the officer with her spit, he nevertheless found she intentionally spat at them. The accused was convicted of assaulting a police officer under. s 270(1) of the *Criminal Code*.

Manitoba Court of Appeal

The accused argued that the trial judge erred because he failed to apply the correct legal test regarding the *mens rea* requirement for assault and the facts he accepted were incompatible with a guilty finding. But the Court of Appeal rejected the accused's submissions even though the trial judge's reasons were ***"inelegant"*** and ***"far from perfect"***.

First, the accused agreed she need not have had the intent to spit on the officer that she ultimately hit. Rather, all that was required was the intent that the spit make contact with any one of the officers. Second, the finding that she was "hysterical" or "out of control" did not necessarily lead to the conclusion that she was unable to form the minimal intent required for assault. Moreover, much of the trial judge's findings that the accused complained about were directed to her credibility and not to the issue of her intent.

Videos of the incident tendered as evidence also supported the accused's conviction. The Appeal Court stated:

> There is no doubt that a review of the video evidence shows that the accused was very upset. She was yelling and resisting the officers' attempts to restrain her. She agreed that she was engaging in this behaviour as she did not want to be restrained. There is also no question that the spit was forceful, deliberate and that there were a number of officers directly above her at the time. In light of the fact that the officers were restraining her legs and arms, the trial judge concluded that spitting was the only option she had in terms of trying to assault any of the officers involved and that she intentionally did so. We are not convinced that he erred in this regard. [para. 11]

The accused's appeal was dismissed.

Complete case available at www.canlii.org

OBJECTIVE GROUNDS FOR ARREST CONSIDERS ALL OF THE CIRCUMSTANCES

R. v. Ballantine, 2019 ONCA 498

After drinking beer and wine throughout the day and into the evening when it was getting dark at about 9:00 pm, the accused took control of a boat. Travelling at 25-30 mph in unfamiliar waters, the accused failed to follow directions and, about a minute after taking control of the boat, he turned the boat on a sharp angle up over the rocky shore of an island and directly into a tree. Two of the boat's passengers were ejected and injured.

The first officer on the scene arrived at 9:51 pm and by 10:00 pm, having formed reasonable grounds, he arrested the accused for impaired operation of a vessel. The officer read the accused a breath demand and he was transported to the police station where he provided two samples of his breath registering readings of 82 and 75 mg%.

Ontario Court of Justice

The judge concluded that the arrest was lawful. There was an accident where the operator of a boat somehow managed to crash into an island with sufficient force to cause two passengers to be ejected. The officer also spoke with a witness, who identified the accused as the operator of the boat. The accused admitted he had consumed alcohol, had an odour of alcohol coming from his breath, had red or glossy eyes and was unsteady. ***"While [the accused's] red or glossy eyes and his unsteadiness in the context of a recent accident and the natural terrain might not in and of themselves be sufficient to indicate impairment, the assessment of the objective reasonableness of the officer's grounds is not an exercise in parsing off indicia, but one of considering all of the circumstances that the officer was presented with,"*** said the judge. ***"[The officer's] grounds to make the arrest were both subjectively reasonable, and in the context of the totality of the circumstances, objectively reasonable."***

A forensic toxicologist was called as an expert witness by the Crown and performed a retrograde extrapolation of the accused's BAC at the time of the incident. Based on a number of assumptions, the toxicologist projected the accused's BAC to be between 80 and 140 mg%. The toxicologist also opined that a person would be impaired at this BAC although he could not specifically say that the accused was impaired without individualized testing of the accused's reaction to alcohol.

The accused was convicted on two counts of impaired operation of a vessel causing bodily harm and sentenced to 18 months' imprisonment, 12 months' probation, and a two-year driving prohibition. Restitution, no-contact and victim surcharge orders were also imposed.

Ontario Court of Appeal

The accused challenged his convictions arguing, in part, that the arresting officer did not have the requisite reasonable and probable grounds to make the arrest for impaired operation of the boat.

Reasonable Grounds for Arrest

The accused submitted that the officer's subjective belief that there were reasonable and probable grounds for arrest was rendered objectively unreasonable because he failed to conduct any investigation into the circumstances leading to the accident before he arrested the accused. In his view, the trial judge simply reasoned backwards from the fact of the accident, which resulted in injuries, to impairment.

The Court of Appeal rejected this argument. Before the accused was arrested, the officer observed the scene of the accident. He spoke with a witness who identified the accused as the operator of the boat. He also spoke to and observed the accused, who admitted he had consumed alcohol. The trial judge did not err in holding that the officer's grounds to make the arrest were both subjectively and objectively reasonable.

The accused's appeal from conviction was dismissed, but the victim surcharge order imposed at sentencing was quashed.

Complete case available at www.canlii.org

FAX TELEWARRANT NEED NOT BE RECORDED VERBATIM

R. v. DiBenedetto, 2019 ONCA 496

Acting on information provided by five confidential informants, surveillance, various police reports, other investigative tools and training and experience, a police affiant used the telewarrant procedure under s. 487.1 of the *Criminal Code* to obtain warrants to search both a rural and residential property for methamphetamine, clandestine lab equipment, associated paraphernalia, tools of the trade and the proceeds of crime. The ITO alleged that there were reasonable grounds to believe that the accused and another person were committing various offences involving the production of controlled substances. The warrants were granted, but expired before they could be executed.

BY THE BOOK:

s. 487.1 *Criminal Code*

Telewarrants

487.1 (1) If a peace officer believes that an indictable offence has been committed and that it would be impracticable to appear personally before a justice to make an application for a warrant in accordance with section 487, the peace officer may submit an information on oath by telephone or other means of telecommunication to a justice designated for the purpose by the chief judge of the provincial court having jurisdiction in the matter.

Information submitted by telephone

(2) An information submitted by telephone or other means of telecommunication, other than a means of telecommunication that produces a writing, shall be on oath and shall be recorded verbatim by the justice, who shall, as soon as practicable, cause to be filed, with the clerk of the court for the territorial division in which the warrant is intended for execution, the record or a transcription of it, certified by the justice as to time, date and contents.

[...]

The next day, the affiant resubmitted the application to the telewarrant centre. A different justice denied the application because of "insufficient grounds". Later that day, the ITO affiant resubmitted the application after making corrections and adding contents to the previously rejected ITO. The new justice who received the ITO telephoned the affiant and sought information about which paragraphs of the ITO contained the added contents. This call was not recorded, nor was the ITO affiant under oath.

When the warrants were executed, police located a methamphetamine lab inside a barn. They also found $53,000 cash, as well as numerous publications referencing drugs and how to manufacture them, from inside the residence. The accused was convicted of producing methamphetamine, possessing methamphetamine

"The ITO was submitted by fax, which, for the purposes of s. 487.1(2), is a means of telecommunication that produces a writing. The subsection only requires 'an information', that is to say, the ITO, to be on oath and recorded verbatim if it is submitted 'other than' [by] a means of telecommunication that produces a writing'. That is simply not this case."

for the purpose of trafficking and possessing the proceeds of crime. He was sentenced to five years imprisonment.

Ontario Superior Court of Justice

Among other things, the accused challenged the issuance of the telewarrants arguing they were fatally flawed because the ITO affiant and issuing justice had failed to comply with the requirements of s. 487.1(2) of the *Criminal Code*. But the judge concluded that s. 487.1(2) did not apply.

Ontario Court of Appeal

The accused submitted that s. 487.1(2) required that the conversation between the ITO affiant and issuing justice (pointing out the paragraphs added to the previously rejected ITO) had to be under oath, recorded verbatim and a certified copy of the recording or a transcription of it filed with the court. Because this was not done, the accused contended the warrant-issuing process was invalid.

The Court of Appeal, however, agreed with the trial judge that s. 487.1(2) did not apply. ***"The ITO was submitted by fax, which, for the purposes of s. 487.1(2), is a means of telecommunication that produces a writing,"*** said the Appeal Court. ***"The subsection only requires 'an information', that is to say, the ITO, to be on oath and recorded verbatim if it is submitted 'other than" [by] a means of telecommunication that produces a writing'. That is simply not this case. And at all events, the additional material was contained in the ITO. The mischief at which s. 487.1(2) is directed is not at work here."***

The accused's appeal was dismissed.

Complete case available at www.ontariocourts.on.ca

Editor's Note: Additional details taken from *R. v. DiBenedetto*, 2017 ONSC 204.

KEY TO GROW-OP ADMITTED DESPITE s. 10(b) CHARTER BREACH

R. v. Do, 2019 ONCA 482

The police executed a search warrant at a bungalow and seized a large quantity of marihuana and several items linking the accused to the grow-op found therein. Several hours later, the accused arrived on the scene and was arrested just after she approached the home. She was searched incident to arrest and the police seized the key to the front door. The accused immediately requested access to her lawyer, but she was kept at the scene while officers completed their work. She was then transported to the police station where she was required to wait over three hours before being permitted to contact a lawyer.

Ontario Court of Justice

The accused was convicted of producing marihuana and possessing marihuana for the purpose of trafficking.

Ontario Court of Appeal

The accused argued her *Charter* right to contact counsel under s. 10(b) was breached, and that this breach tainted not only the

seizure of the house key, but also the drugs and other items seized under the search warrant. The Crown conceded a s. 10(b) breach given the delay of the police implementing the accused's right to counsel.

Admissibility

The Court of Appeal distinguished between the seizure of the drugs and other items under the search warrant, and the seizure of the house key from the accused when she was arrested. ***"The earlier seizure of the drugs and other items under a valid search warrant properly executed was a transaction largely completed at the time of the [accused's] arrest, and was not precipitated by it,"*** said the Court of Appeal. ***"It was causally, temporally and contextually distinct and separate from the arrest. Any possible breach of s. 10(b) in the time following the [accused's] arrest does not attach to that evidence."*** The evidence seized under the warrant was not obtained in a manner that infringed a *Charter* right and therefore was not subject to exclusion under s. 24(2).

The key, however, was obtained in a manner that breached the *Charter*. ***"The police seized the key to the front door of the residence where the seizure of drugs was made from the [accused] incident to her arrest,"*** said the Court of Appeal. ***"Because of the temporal connection to any possible s. 10(b) breach, the key is arguably subject to exclusion."***

Nevertheless, the key was admitted as evidence. ***"In our view the s. 10(b) breach was not strategic, nor was it serious or systemic,"*** said the Appeal Court. ***"The impact of the seizure of the house key from the [accused] was minimal, because the validly obtained admissible evidence already connected her to the bungalow where the grow-op operated. As evidence, the key was real and reliable. Society has an interest in the [accused's] trial on the merits, which favours the admission of the key."***

The Accused's appeal was dismissed.

Complete case available at www.canlii.org

CIRCUMSTANTIAL EVIDENCE SUFFICIENT TO PROVE AMBULANCE THIEF'S IDENTITY

R. v. Peoples, 2019 ABCA 256

The accused was a patient in the Emergency ward at a hospital during the evening. He had an air cast on his left leg, was carrying crutches and came into Emergency complaining of excruciating pain in his leg. He was offered Tylenol or Advil for the pain, then left abruptly. Seven minutes later, an ambulance was stolen.

About 13 minutes after that, a man who matched the accused's description (wearing an air cast on his left foot and carrying crutches) was observed by a witness leaving the abandoned ambulance which was located about two kilometers away from the hospital. The witness called police. A few drug kits were missing from the back of the ambulance when it was found. The accused was charged with theft of a motor vehicle and medical supplies.

Alberta Provincial Court

The judge found the accused was a patient treated at the hospital and that he was identified by a nurse as being the person in the CCTV footage from the Emergency that evening. He was in a wheelchair holding crutches. The judge concluded that the person described by the witness leaving the ambulance had the same distinctive characteristics as the accused, both as described by the nurse and as seen on the security footage. The judge rejected the argument that this could have simply been another individual walking down the street. He was satisfied that the only reasonable inference to be drawn from the circumstantial evidence was that it was the accused who stole the ambulance and the drug kits. The accused was found guilty of theft.

Alberta Court of Appeal

The accused submitted that the trial judge misapplied the law of circumstantial evidence in convicting the accused. The Court of Appeal disagreed and ruled that the trial judge correctly applied the test for circumstantial evidence to the facts he found. The inferences he drew from the evidence were the only reasonable ones available.

The accused's appeal was dismissed.

Complete case available at www.canlii.org

ACCELERATING TO GROSSLY EXCESSIVE SPEED WHEN APPROACHING INTERSECTION WAS DANGEROUS

R. v. Chung, 2019 BCCA 206

The accused was driving his car when he approached a Vancouver intersection. The posted speed limit was 50 km/h, it was daylight and the roadway was damp. Visibility was good and traffic was relatively light (free flowing). There were several pedestrians in the area and there were businesses nearby.

The accused changed lanes abruptly in the block leading up to the intersection and he accelerated from 50 km/h to 140 km/h and began passing vehicles on their right. He reached a speed of about 140 km/h. Another car turning at the intersection was nearly struck. The accused braked as he entered the intersection where he then struck a left turning vehicle at 119 km/h, killing its driver. A dash cam video from a nearby motorist stopped at a cross street showed the accused's vehicle travelling at a very high rate of speed approximately 1.2 seconds before the collision. The accused was charged with dangerous driving causing death.

British Columbia Provincial Court

The judge found that the *actus reus* for dangerous driving had been established. The excessive speed of the accused's vehicle was dangerous. However, the judge held that the mental element of dangerous driving (*mens rea*) had not been proven because, in his view, a driver's excessive speed alone, if it continued for only a few seconds and without other dangerous conduct, could not be said to constitute a ***"marked departure from the standard of a reasonably prudent driver"***, a requirement for a dangerous driving conviction. The accused was acquitted.

British Columbia Court of Appeal

The Crown appealed the accused's acquittal arguing the trial judge erred in determining the *mens rea* element of dangerous driving.

Dangerous Driving

The crime of dangerous driving requires proof of both an *actus reus* and *mens rea*. The *actus reus* requires the Crown to prove beyond a reasonable doubt that the accused objectively drove in a manner that endangered the public, with regard to all of the circumstances surrounding the motor vehicle's use.

The *mens rea* element can take two forms: modified "objective mens rea" or "subjective mens rea". Objective mens rea requires a marked departure from the standard of a reasonably prudent driver in the circumstances as the accused. This marked departure is more than a mere departure sufficient for establishing civil negligence. Subjective mens rea - deliberate dangerous driving - will also support a conviction because intentionally creating a danger for other users within the meaning of s. 249 of the *Criminal Code* will constitute a marked departure from the standard expected of a reasonably prudent driver.

BY THE BOOK:

s. 249 *Criminal Code*

Dangerous operation of motor vehicles ...

s. 249 (1) Every one commits an offence who operates

(a) a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place;

OLD

...

(4)Every one who commits an offence under subsection (1) and thereby causes the death of any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Dangerous operation

s. 320.13 (1) Everyone commits an offence who operates a conveyance in a manner that, having regard to all of the circumstances, is dangerous to the public.

NEW

...

Operation causing death

(3) Everyone commits an offence who operates a conveyance in a manner that, having regard to all of the circumstances, is dangerous to the public and, as a result, causes the death of another person.

Proof of the *actus reus*, however, does not on its own, without more, support a reasonable inference that the mens rea required was present. ***"Proof of dangerous driving, per se, is not enough to convict an accused,"*** said Justice Groberman, delivering the Appeal Court's judgment. ***"The driving must be so dangerous as to take it outside of the realm of mere negligence, momentary inattention, or an understandable misjudgment. Where the degree of dangerousness does take the driving beyond those types of errors, however, there is no basis for suggesting that the mental element of the crime cannot be inferred from the objectively dangerous driving."***

"I cannot understand how one could possibly describe the accused's conduct in driving at almost three times the speed limit into a major urban intersection as anything but a marked departure from the standard expected of a reasonable driver."

In this case, the Court of Appeal concluded that the rapid acceleration and excessive speed that the accused exhibited in the seconds before the accident constituted a marked departure from the reasonable driver standard. Justice Groberman stated:

> In my view, the trial judge's conclusion that "momentary" speeding, without more, cannot sustain a conviction for dangerous driving was flawed. The judge failed to recognize that categorizing conduct simply as "speeding" fails to consider the degree to which the conduct departs from reasonable standards. While it is true that driving moderately in excess of the speed limit will not necessarily amount to a "marked departure" from reasonable standards of driving, driving at a grossly excessive speed will. In this case, I cannot understand how one could possibly describe the accused's conduct in driving at almost three times the speed limit into a major urban intersection as anything but a marked departure from the standard expected of a reasonable driver. [para. 33]

And further:

> [T]he conduct of [the accused] in this case was very clearly a marked departure from the standard of the reasonable driver. While he was not inattentive to his driving, his speeding was so wildly beyond any safe standard that it is appropriately branded as criminal.
>
> The judge's view that speeding alone, if it occurs over a relatively short period of time, cannot justify a criminal sanction is erroneous. [The accused's] conduct in driving at a grossly excessive and obviously dangerous speed through a major intersection was blameworthy, and justifies the imposition of a criminal sanction. [paras. 39-40]

> [The accused's] conduct in accelerating to a grossly excessive speed (almost three times the legal limit) when approaching a major urban intersection was obviously dangerous, and a marked departure from reasonable standards. [para. 44]

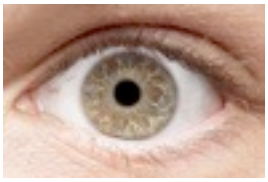
The Crown's appeal was allowed, the accused's acquittal was set aside and a conviction was entered. The matter was remitted back to Provincial Court for sentencing.

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

PLAIN VIEW DOCTRINE EXAMINED: COCAINE BRICK ADMISSIBLE

R. v. Gill, 2019 BCCA 260

Two police officers went to the accused's home to execute an impression warrant in relation to his possible connection to an earlier sale of two kilograms of cocaine to a police agent. The accused was near the garage in front of his home and he answered to his first name. An officer explained the impression warrant and told the accused that he was required to accompany them to the police station to provide fingerprints. In response, the accused motioned toward the front door of his home and indicated that he needed to go inside to tell his brother. The officers told him that he was not to enter the house and that he was being detained. However, the accused persisted by pulling toward the door.



The officers took down the accused to prevent him from entering the home. After tackling him, the officers noticed an unsealed envelope fell to the ground during the struggle. The accused was handcuffed. An officer retrieved the fallen envelope (and warrant which had also fallen in the course of the struggle) and placed it on the trunk of the police vehicle. The envelope was then placed upright against the back of the front passenger seat of the police vehicle. The envelope's unsealed flap gaped open to reveal a 10" x 6" x 3" vacuum sealed rectangular brick wrapped in brown material and some silver tape. The officer recognized the contents of the envelope as a kilogram of cocaine based on his experience. The accused was subsequently arrested for possessing a controlled substance. The cocaine was processed as an exhibit and the accused was charged with possessing cocaine for the purpose of trafficking.

British Columbia Supreme Court

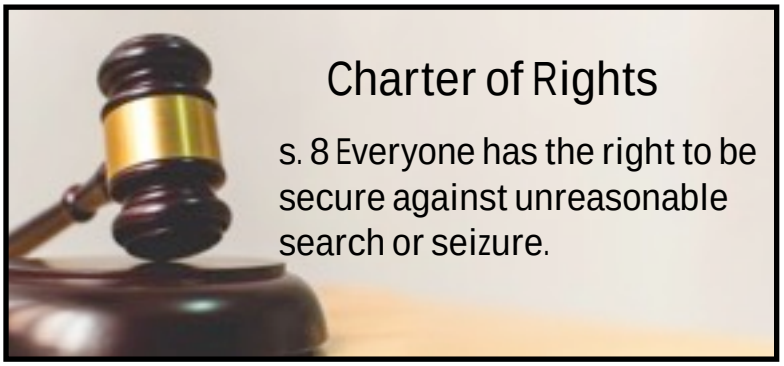
The judge, accepting the officer's evidence, found the discovery of the cocaine brick met the requirements of the common law **"plain view" doctrine**:

1. *The police were in the process of detaining the accused pursuant to a valid impression warrant when the envelope containing the cocaine dropped from the accused's person and was retrieved by police;*
2. *[The officer] was legally obliged to pick up the envelope and to take steps to secure it with its contents, as it was part of the accused's personal effects upon detention;*
3. *The envelope was not sealed at the time and its flap was not adhering to close the top edge of the envelope;*
4. *When [the officer] took steps to secure the envelope with its contents in his police vehicle, the top of the envelope with the flap opened such that [the officer] was able to see that it contained a brick-like package he associated with cocaine; and*
5. *... I do not find that [the officer] engaged in a positive action to make the interior of the envelope visible. Rather, given the size of the envelope, its contents, and the fact that the envelope was not sealed, the interior of the envelope became visible to him inadvertently given the size of its contents once it was placed, as he described, leaning against the back of the front passenger seat.*

There was no s. 8 *Charter* breach, the cocaine brick was admissible as evidence and the accused was convicted of possessing cocaine for the purpose of trafficking.

British Columbia Court of Appeal

The accused challenged his conviction, in part, by arguing that the plain view doctrine did not apply. He suggested that the officer conducted an unauthorized search; he did not accidentally stumble across evidence in plain view. In his opinion, the officer's conduct which led him to see inside the envelope was deliberate and calculated, not unintentional, especially when he placed the envelope upright on the vehicle's front passenger seat. He emphasized the numerous interactions the officer had with the envelope: first picking it up off the ground and placing it on the trunk; then picking it up again to move the envelope to inside the vehicle; then placing the envelope upright on the front passenger seat so that the weight of it combined with the unsealed flap made the inside visible. He contended the officer knew that the accused was being investigated in relation to a drug trafficking operation that involved the sale of cocaine bricks, and so he must have been "primed" to think about bricks of cocaine. Moreover, he alleged that if touching and moving the envelope did not lead the officer to detect the envelope contained cocaine, then visibly seeing the object would not have advanced the officer's belief that it was immediately apparent that the item was probably connected to criminal activity.



Plain View Doctrine

Justice Griffin, authoring the Court of Appeal's unanimous judgment, first noted the purpose of s. 8 of the *Charter*:

> Section 8 of the Charter guarantees everyone "the right to be secure against unreasonable search or seizure." This section protects privacy interests and is an important check on police conduct.
>
> To establish that a state act of search and seizure is reasonable, police must generally obtain prior judicial authorization by way of a warrant. In the absence of a warrant, the Crown has the onus of establishing that the act of search and seizure is reasonable. [para. 21-22]

And further:

> The key to the application of the plain view doctrine is the principle that s. 8 of the Charter protects reasonable expectations of privacy against state intrusions. The premise is that a person can have no reasonable expectation of privacy in an item in plain view to officers where the officers have a right to be present and are carrying out their lawful duties. [references omitted, para. 32]

After examining the origin of the doctrine, the Court of Appeal noted the following about the application of the plain view doctrine:

- Plain view is a seizure power limited to items that are visible; it is not a power to conduct an exploratory search to find evidence of other crimes.
- The application of the plain view doctrine requires a consideration of the following four elements:

"To establish that a state act of search and seizure is reasonable, police must generally obtain prior judicial authorization by way of a warrant. In the absence of a warrant, the Crown has the onus of establishing that the act of search and seizure is reasonable."

- ☑ **Lawful Justification:** An officer must be lawfully in the place and acting lawfully in the exercise of police powers when the officer discovers the evidence.

- ☑ **Inadvertent Discovery:** The discovery of the evidence must be inadvertent. The discovery of the evidence need not be a surprise in the sense that police did not expect to see it. The evidence must not, however, be discovered by an unauthorized search. Rather, the police could expect to see the evidence but the evidence must be in the open when the police are lawfully in the place where it is visible, and lawfully exercising police duties.

- ☑ **Evidence in Plain View:** The evidence has to be in plain view — detected through the unaided use of the officer's senses;

- ☑ **Immediately Apparent:** It must be immediately apparent to the officer that there are reasonable and probable grounds to believe the item is associated with criminal activity. The immediacy requirement means that it is apparent without further investigations. The officer must not take extra investigative steps, such as manipulating the item, to firm up suspicions of criminality The reasonable and probable grounds requirement means that more than mere suspicion is required, but not certainty.

- The four element test ***"is not a mechanical, rigid one but an attempt to explain the doctrine for what it is, and, importantly, for what it is not. The reason for the elements is to minimize the dangers of the plain view doctrine being used as a pretext to get around the necessity of obtaining a warrant. It is not a way of allowing the admission of evidence obtained by police conducting an unauthorized search. It allows evidence to be admitted because common sense tells us that officers should not simply ignore evidence of criminal activity in plain view to them as they carry out the lawful exercise of their duties."***

In this case, Justice Griffen found the four criteria for the plain view doctrine had been satisfied:

- Lawful Justification — the officer was lawfully allowed to be where he was — executing a valid impression warrant — when he saw the envelope. The police had the right or obligation to pick up, move and secure the envelope as a personal possession of the accused.

- Inadvertent Discovery — Not only was the discovery of the envelope inadvertent so too was the discovery of the evidence inside the envelope. The trial judge concluded that the officer did not actively take any steps to determine what was in the envelope nor did he suspect it contained cocaine before the contents became visible to him.

- Evidence in Plain View — At the time the cocaine brick was visible to the officer, after moving it to the front passenger seat of the police vehicle to secure it as personal property, the officer was still acting lawfully. As the trial judge found, in the course of securing the envelope, the officer was able to see in the envelope, inadvertently, not through a deliberate search and the item as in plain view.

- Immediately Apparent — When the officer saw inside the envelope he could see that it contained a kilogram of cocaine based on his experience dealing with kilogram packages of cocaine. He had seen over 30 kilogram bricks of cocaine before. Immediately upon seeing the item, the officer had reasonable and probable grounds to believe it was a brick of cocaine.

The accused's appeal was dismissed.

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

Canadian Police and Peace Officers' 42nd Annual Memorial Service

September 29, 2019
Parliament Hill
Ottawa, Ontario

Le 42e service commémoratif annuel des policiers et des agents de la paix canadiens

Le 29 septembre 2019
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THE MEMORIAL LA COMMÉMORATION™

ADMINISTRATIVE ALCOHOL & DRUG RELATED DRIVING PROHIBITIONS

BC's Immediate Roadside Prohibition (IRP) program was introduced in 2010. Under this program, police may issue a 3, 7, 30 or 90-day prohibition at the roadside to alcohol-affected drivers under B.C.'s *Motor Vehicle Act*.

A police officer will issue an IRP when a driver has care or control of a motor vehicle, and following a demand to provide a breath sample on an Approved Screening Device (ASD):

- if the driver has a blood alcohol concentration over 0.05 (50mg%) BAC (the "**Warn**" range)
- if the driver has a blood alcohol concentration over 0.08 (80mg%) BAC (the "**Fail**" range)
- if the driver fails or refuses to comply with a breath test without a reasonable excuse.

For the 3 or 7 day IRP, a police officer may decide to impound the driver's vehicle. For 30 or 90 day IRP's, vehicle impoundment is mandatory.

Administrative Driving Prohibitions

An Administrative Driving Prohibition (ADP) is a 90 day driving prohibition served on drivers who provide a breath test into an approved instrument such as an Intoxilyzer.

If a driver's breath sample indicates a BAC above 0.08 (80mg%), or if the driver refuses to provide a sample of breath, police may issue a 90-day "Notice of Driving Prohibition" and may also charge the driver under the *Criminal Code*. A driver served with an ADP has a 21-day period before the prohibition takes effect.

IMMEDIATE ROADSIDE PROHIBITIONS

ASD Result	WARN	WARN	WARN	FAIL or REFUSE
	BAC .05 - .08	BAC .05 - .08	BAC .05 - .08	BAC over .08
Incident	1st incident	2nd incident within 5 years	3rd incident within 5 years	
IRP Length	3 days	7 days	30 days	90 days
Vehicle Impound Length	3 days (officer discretion)	7 days (officer discretion)	30 days	30 days
Administrative penalty	$200	$300	$400	$500

Source: Immediate Roadside Prohibition Fact Sheet

BC's ALCOHOL DRIVING PROHIBITIONS

	Immediate Roadside Prohibitions						Administrative Driving Prohibitions			
	Warn			90 Days			90 Days			Total IRP & ADP
YEAR	3 day IRP	7 day IRP	30 day IRP	FAIL	REFUSE	Total IRP	FAIL	REFUSE	Total ADP	
2014	5,702	368	25	11,576	1,414	19,085	1,049	352	1,401	20,486
2015	4,670	351	33	9,289	1,863	16,206	1,127	481	1,608	17,814
2016	4,588	334	33	8,864	1,830	15,649	1,127	464	1,591	17,240
2017	4,242	259	19	8,391	1,715	14,626	1,068	420	1,488	16,114
2018	4,742	293	24	9,217	1,711	15,987	1,024	377	1,401	17,388

Source: Alcohol Driving Prohibitions

BC's REVIEWS FOR ALCOHOL DRIVING PROHIBITIONS

	Immediate Roadside Prohibitions						Administrative Driving Prohibitions		
	Warn			90 Days			90 Days		
YEAR	Reviews	Successful	% Successful	Reviews	Successful	% Successful	Reviews	Successful	% Successful
2014	218	75	34%	2,954	1,114	38%	251	84	33%
2015	158	53	34%	2,757	1,309	47%	335	150	45%
2016	171	32	19%	2,814	861	31%	323	138	43%
2017	158	8	5%	2,635	657	25%	348	134	39%
2018	186	26	14%	2,605	507	19%	306	102	33%

Source: Reviews For Alcohol Prohibitions

VEHICLE IMPOUNDMENTS

BC's Vehicle Impoundment (VI) Program is a road safety initiative permitting police to immediately impound vehicles operated by drivers affected by alcohol. Drivers served with an IRP may see the vehicle they were driving impounded for 3, 7 or 30 days, depending on the prohibition length. VI's may also be issued for prohibited, suspended and unlicensed drivers; excessive speeders; stunt drivers and street racers; and improperly seated motorcyclists.

BC VEHICLE IMPOUNDMENTS

TYPE	2014	2015	2016	2017	2018	5 Year Total
BAC - WARN - 3 day VI	2,799	2,305	2,432	2,353	2,805	**12,694**
BAC - WARN - 7 day VI	258	236	217	223	254	**1,188**
BAC - WARN - 30 day VI	76	77	43	40	49	**285**
BAC - FAIL/Refuse - 30 day VI	12,244	10,767	10,304	9,731	10,517	**53,563**
Prohibited/Suspended - 7 day VI	2,490	2,428	2,211	2,197	2,392	**11,718**
Prohibited/Suspended - 30 day VI	748	732	664	591	732	**3,467**
Prohibited/Suspended - 60 day VI	246	206	199	186	245	**1,082**
Unlicensed - 7 day VI	1,876	1,765	1,526	1,441	1,515	**8,123**
Unlicensed - 30 day VI	199	156	151	136	140	**782**
Unlicensed - 60 day VI	47	34	32	31	36	**180**
Excessive Speed - 7 day VI	6,394	6,871	7,127	5,874	6,202	**32,468**
Excessive Speed - 30 day VI	296	285	302	240	261	**1,384**
Excessive Speed - 60 day VI	40	27	24	25	33	**149**
Race - 7 day VI	73	62	52	43	27	**257**
Race - 30 day VI	3	2	2	2	3	**12**
Stunt - 7 day VI	189	192	187	134	142	**844**
Stunt - 30 day VI	9	8	17	13	9	**56**
Stunt - 60 day VI	0	0	1	0	0	**1**
Sitting - 7 day VI	2	0	0	1	0	**3**
Multiple Reasons - 7 day VI	277	389	1,442	1,699	1,882	**5,689**
Multiple Reasons - 30 day VI	424	372	515	495	569	**2,375**
Multiple Reasons - 60 day VI	21	21	49	61	72	**224**
TOTAL	**28,711**	**26,935**	**27,497**	**25,516**	**27,885**	**136,544**

Source: Vehicle Impoundments

24 Hour Prohibitions

A police officer in BC may serve a driver with a 24-hour driving prohibition if the officer has reasonable grounds that the driver's ability to drive a motor vehicle is affected by a drug or alcohol. The driver is then automatically prohibited from driving a motor vehicle for a period of 24 hours (see s. 215 of BC's *Motor Vehicle Act*).

24-HOUR DRIVING PROHIBITIONS

YEAR	Alcohol	Drug	Total	% Drug
2014	3,460	3,080	6,540	47%
2015	3,430	2,640	6,070	43%
2016	3,310	2,600	5,910	44%
2017	3,001	2,435	5,436	45%
2018	2,830	2,610	5,440	48%
5 Year Total	16,031	13,365	29,396	45%

Source: Alcohol Driving Prohibitions

Alcohol-Related Motor Vehicle Fatalities

RoadSafetyBC has released a report on acohol-related motor vehicle (MV) fatalities. The report suggests that there was an immediate and sustained reduction in alcohol-related motor vehicle fatalities since the IRP program was implemented. in September 2010.

"In the final three months of 2010, the MV fatalities related to alcohol for the province were reduced by 58%, from an average of 26 to 11," noted the report. ***"In the first full calendar year of the program, alcohol related MV fatalities dropped from 113 to 68, a 40% reduction. This reduction has continued from 2012 through 2018 with there being 50% fewer alcohol-related fatalities since the introduction of the IRP."***

Source: Report on Alcohol-Related Motor Vehicle (MV) Fatalities

Fatal Victims in Crashes where Alcohol was Deemed a Contributing Factor

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Fatal Victims	103	129	114	128	102	92	111	68	49	52	59	61	52	64	51

There were 100 fatal victims from January - September 2010 and 11 from October - December 2010.
The IRP program was implemented on September 20, 2010.

ACCIDENTAL ATV DEATHS

The BC Coroners Service released a report in July 2019 summarizing all accidental all-terrain vehicle (ATV) and utility task vehicle (UTV, side-by-side) deaths in BC. In the last 10 years (2009 - 2018) there were **127** accidental ATV deaths. Males accounted for **107** (**84%**) of decedents while females accounted for **20** (**16%**). More than one-third (**39.7%**) of decedents were injured in the summer months and data from 2009 - 2017 suggest that alcohol and/or drug involvement was identified as a contributing factor in half (**50.9%**) of the deaths. Source: Accidental ATV Deaths 2009-2018

2018 POLICE REPORTED CRIME

In July 2019, Statistics Canada released its *"Police-reported crime statistics in Canada, 2018"* report. Highlights of this recent collection of crime data include:

- There were **2,033,925** crimes (excluding traffic) reported to Canadian police in 2018; this represents **69,796** more crimes reported when compared to 2017.
- The total crime rate increased **+2%**. This includes a violent crime rate rise of **+3%** and a property crime rate rise of **+2%**.

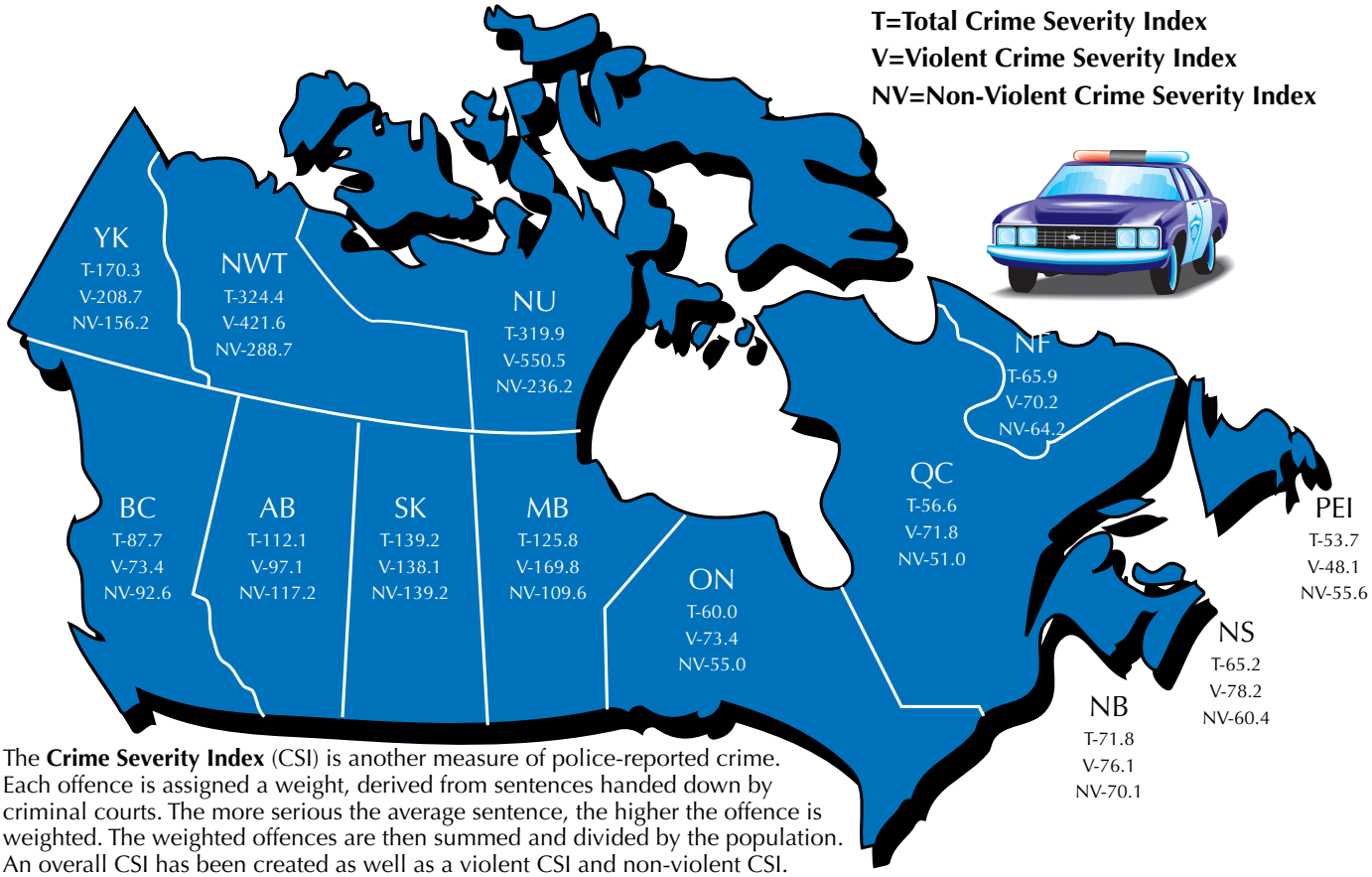
Source: Statistics Canada, 2019, "Police-reported crime statistics in Canada, 2018, Catalogue no. 85-002-X,released on July 22, 2019.

Police-Reported Impaired Driving Offences

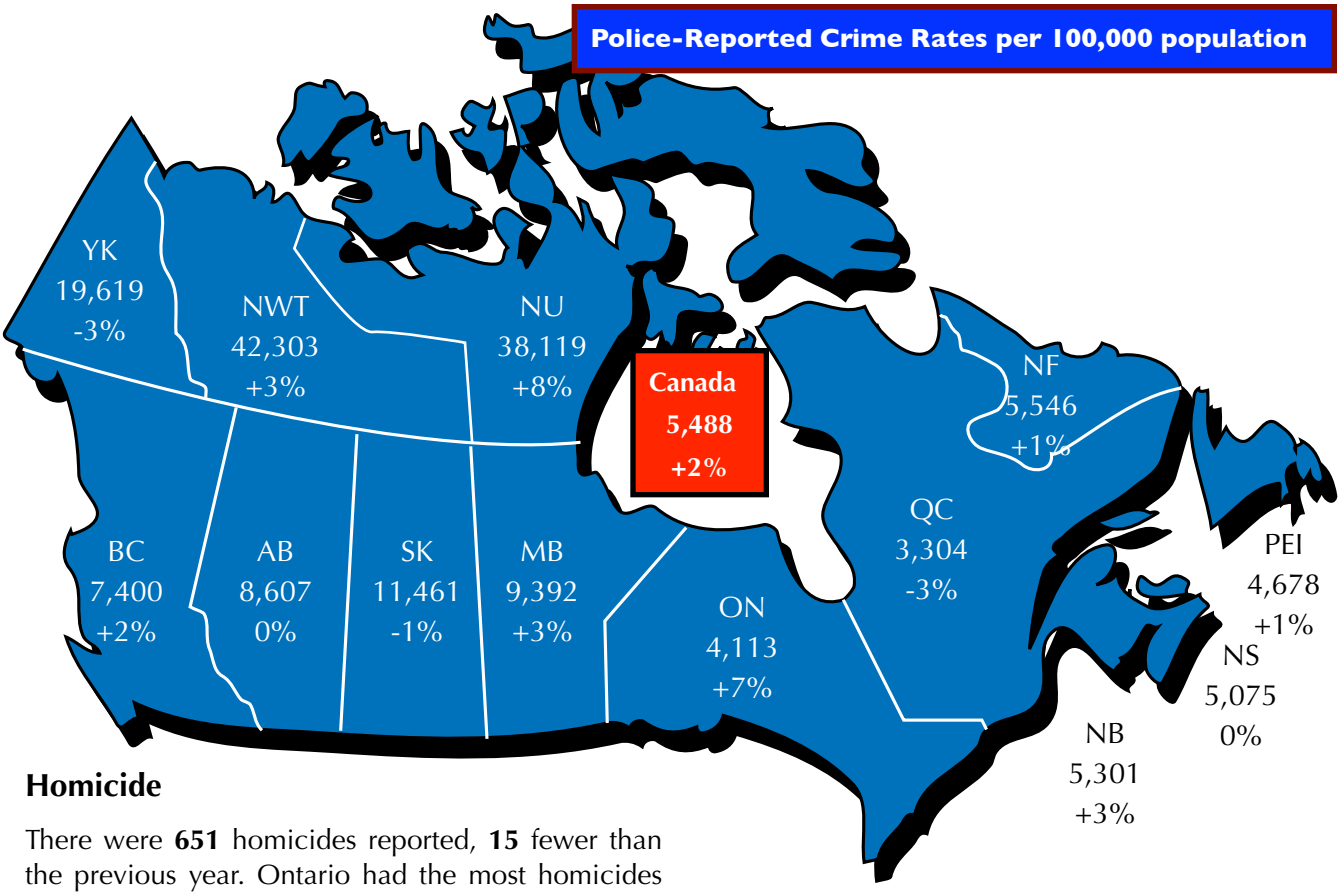
Province	Rate	Impaired Driving Offences	Rate change 2017 to 2018
SK	531	6,167	-1%
PEI	417	639	+47%
AB	286	12,312	+4%
NS	282	2,709	+5%
NF	250	1,315	-6%
MB	248	3,347	-9%
BC	240	11,961	+6%
NB	238	1,834	+1%
QC	166	13,909	-2%
ON	99	14,217	-3%

Police-Reported Crime Severity Indexes

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



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



Homicide

There were **651** homicides reported, **15** fewer than the previous year. Ontario had the most homicides at **266**, followed by British Columbia (**89**), Quebec (**83**) and Alberta (**81**). PEI reported no homicides while Newfoundland reported two (**2**) homicides followed by the Yukon with three (**3**). As for provincial or territorial homicide rates, Nunavut had the highest rate (**20.84** per 100,000 population) followed by the Northwest Territories (**13.47**), the Yukon (**7.41**), Manitoba (**4.07**), Saskatchewan (**2.93**) and Alberta (**1.88**). As for Census Metropolitan Areas (CMA's), Thunder Bay, ON had the highest homicide rate at **6.38**. The Canadian homicide rate was **1.76**.

Top CMA Homicide Rates per 100,000

CMA	Rate	CMA	Rate
Thunder Bay, ON	6.38	Winnipeg, MB	2.69
Brantford, ON	3.36	Edmonton, AB	2.60
Regina, SK	3.10	Saskatoon, SK	2.44
Abbotsford-Mission, BC	3.07	Toronto, ON	2.26
Windsor, ON	2.86	Sherbrooke, QC	1.96

Canada's Top Ten Reported Crimes

Offence	Number
Theft of $5,000 or less (non-motor vehicle)	406,379
Mischief	226,864
Administration of Justice Violations	226,864
Assault-level 1	169,364
Break and Enter	159,812
Shoplifting under $5,000	124,933
Disturb the Peace	94,378
Theft of Motor Vehicle	86,132
Uttering Threats	66,508
Assault-level 2	53,779

Robbery

In 2018 there were **22,450** robberies reported, resulting in a national rate of **61** robberies per 100,000 population. Manitoba had the highest robbery rate followed by Saskatchewan and the Northwest Territories.

Police-Reported Robberies

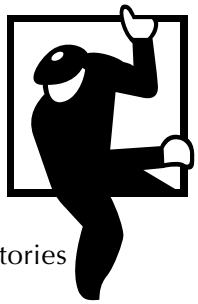
Province/ Territory	Rate	Robberies	Rate change 2017 to 2018
MB	197	2,663	+11%
SK	85	984	-5%
NWT	83	37	+24%
AB	80	3,467	+5%
ON	62	8,814	-7%
BC	49	2,470	-2%
NF	41	214	+16%
QC	39	3,233	-12%
YK	37	15	+22%
NU	34	13	-15%
NS	33	312	0%
NB	27	207	-2%
PEI	14	21	+15%
CANADA	**61**	**22,450**	**-3%**

- Winnipeg, MB had the highest CMA rate for robbery in Canada (**290**), up **+11%** from 2017 rate. Saguenay, QC & Quebec City, QC both had the lowest rate (**18**). Sherbrooke, QC reported a jump of **44%** in its robbery rate. Trois-Rivieres, QC (**+32%**), Belleville, ON (**+31%**), Moncton, NB (**+27%**) and Regina, SK (**+26%**) also saw high double digit increases above 25%.
- Five CMAs reported declines of robbery of more than 20%: Peterborough, ON, (**-54%**), Lethbridge, AB (**-23%**), Hamilton, ON (**-23%**), Quebec City, QC (**-22%**), & Windsor, ON (**-21%**).

Top Ten CMA Robbery Rates per 100,000

CMA	Rate	CMA	Rate
Winnipeg, MB	290	Calgary, AB	88
Thunder Bay, ON	156	Toronto, ON	85
Saskatoon, SK	108	Hamilton, ON	69
Edmonton, AB	108	Ottawa, ON	60
Regina, SK	106	Vancouver, BC	60

Break and Enter



In 2018 there were **159,812** break-ins reported to police. The national break-in rate was **431** break-ins per 100,000 people. Nunavut had the highest break-in rate (**1,261**) followed by the Northwest Territories (**1,004**).

Police-Reported Break-ins

Province/ Territory	Rate	Break-ins	Rate change 2017 to 2018
NU	1,261	484	-19%
NWT	1,004	447	-2%
SK	867	10,080	+2%
MB	753	10,184	+4%
AB	738	31,807	+2%
BC	524	26,161	-3%
YK	506	205	+5%
NB	451	3,475	-5%
NF	380	1,998	-6%
ON	319	45,736	+6%
QC	311	26,110	-15%
NS	281	2,701	-4%
PEI	277	424	+21%
CANADA	**431**	**159,812**	**-1%**

POLICE-REPORTED CRIME IN CANADA, 2018

CRIMES AFFECTING THE CSI INCLUDE:

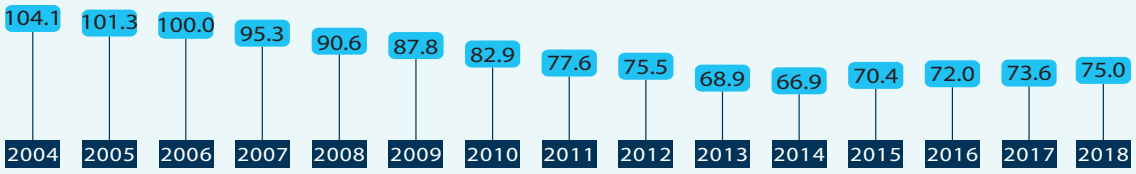
INCREASES

- FRAUD — RATE +13%
- SEXUAL ASSAULT (LEVEL 1) — RATE +15%
- SHOPLIFTING $5,000 OR UNDER — RATE +14%
- THEFT OVER $5,000 — RATE +15%

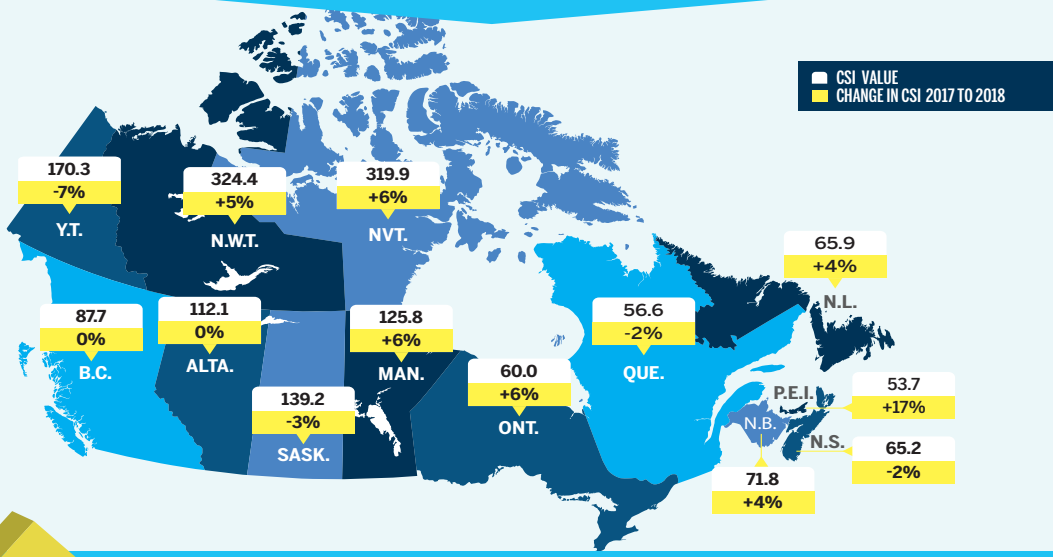
DECREASES

- BREAKING AND ENTERING — RATE -1%
- ROBBERY — RATE -3%
- MISCHIEF — RATE -3%

The Crime Severity Index (CSI)[1] was 2% higher than in 2017, marking the 4th consecutive increase after 11 years of declines. The rise in Canada's CSI in 2018 was the result of increases in numerous offences, most notably, fraud, sexual assault (level 1), shoplifting of $5,000 and under, and theft over $5,000.



IN 2018, SEVEN PROVINCES AND TERRITORIES REPORTED A HIGHER CSI AND FOUR REPORTED A DECREASE.



+15% sexual assault

After two years of discussion around sexual misconduct and unfounded sexual assaults, the **police-reported rate of sexual assault continued to increase.**

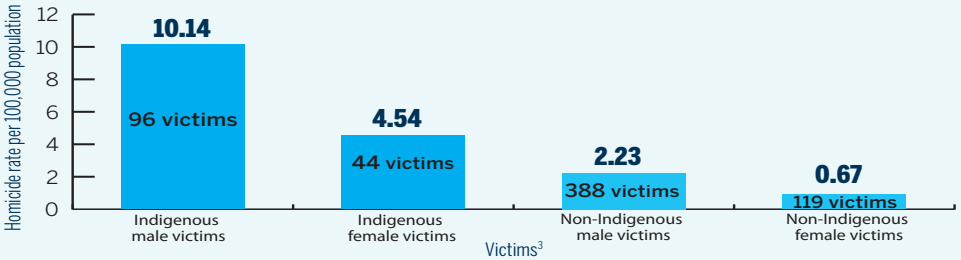
11% CLASSIFIED AS UNFOUNDED[2] IN 2018 COMPARED TO **14%** IN 2017

The rate of methamphetamine offences grew by **13%**

Police reported **2,490** opioid offences (excluding heroin) in 2018.

Rate of extortion in Canada up **44%** in 2018, continuing the rise since 2012.

651 VICTIMS OF HOMICIDE IN CANADA, **15** FEWER THAN IN 2017



1. While the crime rate measures the volume of criminal violations, the Crime Severity Index (CSI) is a measure of both the volume and severity of police-reported crime. To determine the severity of a crime, all crimes are assigned a weight based on actual sentences handed down by the courts in all provinces and territories. More serious crimes are assigned higher weights, while less serious crimes are assigned lower weights. As a result, more serious offences have a greater impact on changes in the index.
2. An incident is 'unfounded' if it has been determined through police investigation that the offence reported did not occur, nor was it attempted.
3. Total homicide victims excludes persons where the Indigenous identity was reported as unknown by police (less than 1% of victims in 2018). Rates as calculated per 100,000 Indigenous population by sex, and per 100,000 non-Indigenous population by sex.

Source: Statistics Canada Canadian Centre for Justice Statistics, Uniform Crime Reporting Survey and Homicide Survey.
"Police-reported crime statistics in Canada, 2018." Juristat. Statistics Canada Catalogue no. 85-002-X.

Catalogue number: 11-627-M
ISBN: 978-0-660-31868-4

2019 BC LAW ENFORCEMENT MEMORIAL SERVICE

Sunday, September 29, 2019 at 1:00 pm
BC Legislature, Victoria, BC

Parade participants to form up at 12:00 noon in the 800 block of Government Street, Victoria, BC.
Parade will step off at 12:40 pm

OTHER WEEKEND EVENTS

6TH ANNUAL BC LAW ENFORCEMENT MEMORIAL GOLF TOURNAMENT

Date: Friday, September 27, 2019
Format: Texas Scramble
Time: 11:00 am Registration / 1:00 pm Shotgun Start
Location: Bear Mountain Golf & Country Club, 1999 Country Club Way, Victoria, BC

6TH ANNUAL BC LAW ENFORCEMENT MEMORIAL RIDE TO REMEMBER

Date: Saturday, September 28, 2019

1ST ANNUAL BC LAW ENFORCEMENT MEMORIAL RUN TO REMEMBER

Date: Saturday, September 28, 2019

BCLEM MEET & GREET

Date: Saturday, September 28, 2019

click here for more info

RCMP STRENGTH

The RCMP is Canada's largest police organization. It is divided into 15 Divisions with Headquarters in Ottawa. Each division is managed by a commanding officer and is designated alphabetically.

RCMP DIVISIONS	
Division	Area
Depot	Regina, SK (Training Academy)
National	National Capital Region
B	Newfoundland & Labrador
C	Quebec
D	Manitoba
E	British Columbia
F	Saskatchewan
G	Northwest Territories
H	Nova Scotia
J	New Brunswick
K	Alberta
L	Prince Edward Island
M	Yukon Territory
O	Ontario
V	Nunavut Territory

RCMP On-Strength Establishment

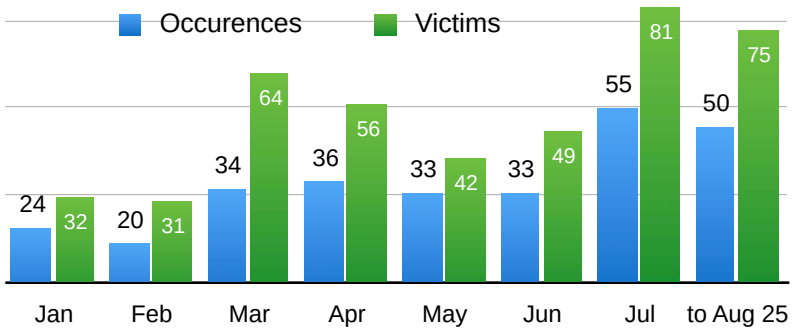
Rank	# of positions		
	Jan. 1, 2018	Apr. 1, 2019	Change
Commissioner	1	1	-
Deputy Commissioners	5	6	+1
Assistant Commissioners	28	33	+5
Chief Superintendents	57	55	-2
Superintendents	187	186	-1
Inspectors	322	331	+9
Corps Sergeant Major	1	1	-
Sergeants Major	8	8	-
Staff Sergeants Major	9	10	+1
Staff Sergeants	838	828	-10
Sergeants	2,018	2,037	+19
Corporals	3,599	3,565	-34
Constables	11,913	11,859	-54
Special Constables	112	116	+4
Civilian Members	3,403	3,445	+42
Public Service Employees	7,695	7,646	-49
Total	**30,196**	**30,127**	**-69**

Source: http://www.rcmp-grc.gc.ca/about-ausujet/organi-eng.htm

TORONTO SHOOTINGS

As of August 25, 2019, the Toronto Police Service reported there were **285** shootings so far in 2019 involving **430** victims including **24** deaths. The 2019 occurrence numbers represent a **5%** increase over last year while the victim count is up **18%**.

Source: Shootings YTD [accessed August 27, 2019]



NON-COMPLIANCE WITH s. 495(2) DID NOT RENDER ARREST UNLAWFUL

R. v. Jowett Work, 2019 BCCA 236

After being dispatched to investigate the theft of a wallet, police officers received descriptions of two suspects and then met with the complainants, who told them that a black wallet with a red band was taken from a pocket when they were standing at the counter of a McDonald's restaurant. The suspects had fled. The complainants described two suspects, a male in his 20s wearing a grey coat or sweater and glasses, and a female wearing pink clothes, skinny pants with her hair in a bun.

The officers contacted a security guard at McDonald's and reviewed a surveillance video that had recorded the theft. One of the officers observed in the video that the male was carrying a backpack with a blue stripe. About 20 minutes after leaving McDonald's, the security guard contacted the officers and advised them that he had seen the two suspects walking on a street. The officers drove to the location, observed the suspects, and arrested them.

After the arrest, the accused was searched for the missing wallet, as well as any weapons or means of escape. In searching the accused's pockets, police found three cell phones, numerous baggies, and rocks of crack cocaine. He was then arrested for possession for the purpose of trafficking. Police also searched the accused's backpack and found further items related to the drug charges.

British Columbia Supreme Court

The judge concluded that the s. 495(2) of the *Criminal Code* rendered the accused's arrest unlawful. ***"There is no evidence of whether the arresting officers believed on reasonable grounds that the public interest, having regard to all of the circumstances including the need to establish the identity of the person, secure or preserve evidence of or relating to the offence, or prevent the continuation or repetition of the offence or the commission of another offence, may not have been satisfied without arresting the accused,"*** said the judge. ***"Further there is no evidence that the arresting officers had reasonable grounds to believe that if they did not arrest the accused he would fail to attend court in order to be dealt with according to the law."***

The search incidental to the unlawful arrest was also unreasonable. The police breached both ss. 8 and 9 of the *Charter* and the evidence was excluded under s. 24(2). The judge then dismissed the charges against the accused.

British Columbia Court of Appeal

The Crown argued that the trial judge erred, in part, by failing to apply the correct legal test when determining the validity of the arrest and in failing to consider the effect of s. 495(3) of the *Criminal Code*. The Crown wanted a new trial

Arrest

Section 495(1)(a) permits a peace officer to arrest without warrant "a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence." This provision ***"requires that the arresting officer subjectively believe there are reasonable and probable grounds to arrest, and that those grounds are objectively reasonable."*** Section 495(2) was enacted ***"to prevent the unnecessary arrest of persons charged with certain kinds of offences where the public interest does not require an arrest. It imposes a further duty on a police officer not to arrest a person without warrant for a hybrid offence where the officer 'believes on reasonable grounds' that the public interest may be satisfied without an arrest, for the reasons set out in ss. 495(2)(d)(i), (ii) or (iii) and (e)."***

BY THE BOOK:

s. 495 *Criminal Code* - Arrest Without Warrant

Arrest without warrant by peace officer

s. 495 (1) A peace officer may arrest without warrant

(a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;

(b) a person whom he finds committing a criminal offence; or

(c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

Limitation

(2) A peace officer shall not arrest a person without warrant for

(a) an indictable offence mentioned in section 553,

(b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or

(c) an offence punishable on summary conviction,

in any case where

(d) he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to

(i) establish the identity of the person,

(ii) secure or preserve evidence of or relating to the offence, or

(iii) prevent the continuation or repetition of the offence or the commission of another offence,

may be satisfied without so arresting the person, and

(e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend court in order to be dealt with according to law.

Consequences of arrest without warrant

(3) Notwithstanding subsection (2), a peace officer acting under subsection (1) is deemed to be acting lawfully and in the execution of his duty for the purposes of

(a) any proceedings under this or any other Act of Parliament; and

(b) any other proceedings, unless in any such proceedings it is alleged and established by the person making the allegation that the peace officer did not comply with the requirements of subsection (2).

The accused was initially arrested for theft (s. 334 of the *Criminal Code*). Theft over $5,000 is an indictable offence while theft under $5,000 is a hybrid offence, which is deemed to be indictable by virtue of the *Interpretation Act*.

In this case, the trial judge erred in considering only s. 495(2) and not whether the arresting officer had reasonable grounds under s. 495(1)(a) to make the arrest. The trial judge was required to determine if the Crown had established that the officers had reasonable grounds to arrest the accused under s. 495(1)(a). Justice Fisher stated:

> [T]here was no need to consider s. 495(2), as any noncompliance with s. 495(2) would not, in a criminal proceeding, render an otherwise lawful arrest unlawful, in light of the deeming provision in s. 495(3)(a)."
>
> Section 495(3) deems a peace officer to be acting lawfully and in the execution of his duty, even if the officer has failed to comply with s. 495(2) ...
>
> The effect of this provision is that a police officer still acts lawfully and the arrest is lawful as long as the Crown establishes that the officer had reasonable and probable grounds to arrest under s. 495(1)(a) or (b). Subsection (3)(b) provides an exception to this deeming provision only in a non-criminal context [as in a civil case] where noncompliance with s. 495(2) is established by a plaintiff or applicant.
>
> It appears that the genesis of s. 495(3) was to foreclose the right to raise a defence in criminal proceedings to charges such as resisting lawful arrest due to noncompliance with s. 495(2). .... [references omitted, paras. 30-3]

And further:

> [I]t is my view that an arrest that is lawful under s. 495(1) cannot be rendered unlawful in a criminal proceeding due only to a peace officer's failure to properly consider the public interest in an arrest as set out in s. 495(2) ... [para. 39]

Here, the trial judge erred in concluding that the arrest of the accused was unlawful by considering only the requirements of s. 495(2) in isolation from both ss. 495(1) and (3).

The Crown's Appeal was allowed and a new trial was ordered.

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

ABSENCE OF SUBJECTIVE GROUNDS FATAL TO SEARCH LEGALITY

R. v. Lai, 2019 ONCA 420

Based on information received about the sounds of a domestic disturbance in an apartment unit, police attended to investigate. When police arrived at the apartment unit, they knocked on the door. One of the accused partially opened the door. As a result of a one to two minute-long interaction with the accused at the door, along with the information previously received, an officer entered and searched the apartment.

Although he did not find anyone in need of assistance, the officer saw cash and drugs. A search warrant was obtained which led to the seizure of about three kilograms of marijuana, 35 grams of cocaine, 140 MDMA methamphetamine capsules, and $36,000 cash. Both accused were charged with possessing controlled substances for the purposes of trafficking and possessing proceeds of crime.

Ontario Court of Justice

The officer who entered and searched the apartment testified he did not smell an odour of marihuana until he stepped into the apartment. A second officer said he could smell a strong odour of marihuana as soon as the door was opened a crack. The judge inferred that the searching officer must also have smelled marihuana immediately and that he was not accurately relating when he smelled marihuana to strengthen his grounds for entry. The searching officer also said he would have "gotten a landlord with a key", thus delaying entry, if no-one had answered the door. This readiness to delay entry, in the judge's view, was inconsistent with a belief that there was an exigent need to enter to protect the life and safety of any occupants.

The judge concluded that the police had ample grounds to attend the apartment to investigate and objective grounds to enter the apartment under their common law authority based on an exigent basis to verify the safety of anyone who may be inside. However, this was not the reason why the searching officer entered. He found the searching officer did not have the subjective grounds he claimed in his testimony. The judge held the warrantless search to be unconstitutional and a s. 8 *Charter* breach, but that the evidence was admissible under s. 24(2). Although the officer did not have the necessary subjective belief, which the trial judge held was ***"serious Charter infringing State conduct"*** and favoured exclusion, the reliability of the evidence on serious charges and the existence of objective grounds, which mitigated the impact of the breach on the *Charter*-protected interests of the accused, favoured inclusion. Both accused were convicted on three counts of possessing drugs for the purpose of trafficking and possessing proceeds of crime.

Ontario Court of Appeal

The accused argued that the trial judge erred in failing to consider the searching officer's misleading testimony in his s. 24(2) analysis and gave undue emphasis to the objective grounds for the search.

Misleading Testimony

The Ontario Court of Appeal held that ***"a finding that an officer intentionally attempted to mislead a court about a constitutional violation that has occurred is an important pro-exclusionary consideration in an s. 24(2) application."*** Here, the trial judge gave no consideration to the searching officer's misleading testimony in admitting the evidence under s. 24(2). In not considering the searching officer's misleading subjective-belief testimony, the trial judge erred.

"A search without subjective grounds is illegal, even where objective grounds would have existed had the officer acted on those grounds."

Objective Grounds

The Appeal Court concluded that the trial judge was wrong to find that the *Charter* breach had little impact on the *Charter*-protected interests of the accused because ***"the public does not have the right or reasonable expectation to be free from a search even of a dwelling where objective reasonable serious public safety grounds exist"***. First, ***"a person with a reasonable expectation of privacy in a place has the constitutional right to be free from an illegal search,"*** said the Court of Appeal. ***"A search without subjective grounds is illegal, even where objective grounds would have existed had the officer acted on those grounds."*** Second, ***"the extent to which the breach undermines the substantial privacy interest in a dwelling house does not vary depending upon whether, in spite of the breach, objective grounds existed,"*** said the Court of Appeal. ***"A court cannot justify a search based on the existence of objective grounds for a form of search that was not undertaken. ... It is improper to diminish the seriousness or impact of an illegal search because the searching officer would have had objective grounds had he conducted a different kind of search."***

s. 24(2) Charter

Since the trial judge did not consider the searching officer's misleading testimony on the repute of the administration of justice and trivialized the important subjective component of the reasonable grounds standard, the Appeal Court conducted its own s. 24(2) analysis.

Although the reliable evidence was crucial to the Crown's case which favoured admission, the *Charter*-breach was serious. The police conducted a search without the required subjective grounds. And the searching officer's misleading evidence significantly aggravated the seriousness of the breach. Finally, the impact of the search on the *Charter*-protected interests of the accused was considerable. The police entered their dwelling house illegally, violating their privacy interests. The evidence obtained during the initial search as well as the subsequent search with a warrant was excluded.

The accuseds' appeal was allowed, their convictions were set aside, and acquittals on all of the charges were substituted.

Complete case available at www.ontariocourts.on.ca

POLICE MUST HAVE ROAD SAFETY IN MIND WHEN USING PROVINCIAL STOP POWERS

R. v. Mayor, 2019 ONCA 578

After receiving an anonymous tip that the accused was dealing drugs from his car, a police High Enforcement Action Team (HEAT) began an investigation. In the course of the investigation, a HEAT officer learned that the accused's driver's licence was suspended. The officer also conducted surveillance on the accused on four occasions without observing any signs of drug trafficking.

The officer, along with another HEAT member, subsequently stopped the accused and arrested him for driving with a suspended licence. After observing signs of impairment, the accused was also arrested for impaired driving. Another officer searched the vehicle and found cocaine, cell phones, and drug-related paraphernalia. The accused was then charged with possessing cocaine for the purpose of trafficking.

"Section 216(1) of the Highway Traffic Act gives an officer the power to stop a vehicle, even if the stop is random and the officer lacks reasonable and probable grounds or even reasonable suspicion."

Ontario Superior Court of Justice

The accused asserted that his arrest was unlawful and sought the exclusion of the evidence. In his view, the police had stopped and arrested him for an improper purpose - to search his vehicle for evidence of drug trafficking. The judge, however, concluded that the accused's arrest was lawful. Although the drug investigation led nowhere, the police were entitled to investigate the accused for suspended driving. The police had a valid purpose for the stop under the *Highway Traffic Act* (*HTA*) and arrested the accused for driving while suspended. The search was a valid inventory. There were no breaches of ss. 8 or 9 of the *Charter*. The accused was convicted of possessing cocaine for the purpose of trafficking.

Ontario Court of Appeal

The accused challenged his conviction contending that the trial judge erred in concluding his arrest was lawful and the subsequent search of his vehicle was reasonable. He suggested, in part, that the trial judge did not apply the proper test when he concluded that the police had the authority to arrest him under the *HTA*, rather than determining whether they used this authority as a ruse to further their drug investigation.

Vehicle Stops

The Court of Appeal described the law as it related to vehicle stops under statute as follows:

> The Ontario Legislature has given the police broad powers to stop motor vehicles for highway regulation and safety purposes, and, in some circumstances, to arrest drivers of motor vehicles. Section 216(1) of the Highway Traffic Act gives an officer the power to stop a vehicle, even if the stop is random and the officer lacks reasonable and probable grounds or even reasonable suspicion. ... Likewise, s. 217(2) of the Highway Traffic Act authorizes an officer to make a warrantless arrest of a person who the officer believes on reasonable and probable grounds to be driving while suspended. If the officer is satisfied that a person is driving while suspended, the officer also has the duty to detain and impound the vehicle: Highway Traffic Act, s. 55.2(1).
>
> However, the existence of these powers does not automatically make motor vehicle stops lawful because the police are not free to use these powers for some other purpose, including to further a criminal investigation. The Legislature granted the police these powers for the purpose of ensuring road safety. The court must ensure that the police use these powers in a manner consistent with this purpose. As a result, if the police do not have road safety purposes subjectively in mind, they cannot rely on the Highway Traffic Act powers to authorize the stop. If the police cannot point to any other legal authority for the stop, the stop will not be authorized by law and so will violate s. 9 of the Charter. The court must thus determine whether the officer actually formed a "legitimate intention" to make the detention or arrest for road safety purposes.
>
> A detention or arrest pursuant to a Highway Traffic Act power can be lawful if the officer has either only road safety purposes in mind or has both road safety and other legitimate purposes in mind. .... The investigation of criminal activity is one such legitimate

"A detention or arrest pursuant to a Highway Traffic Act power can be lawful if the officer has either only road safety purposes in mind or has both road safety and other legitimate purposes in mind."

"[I]f the officer does not have a legitimate road safety purpose in mind and is using the Highway Traffic Act authority as a mere ruse or pretext to stop a vehicle in order to investigate a crime, then the detention will be unlawful."

> purpose. ... In many cases it will be unhelpful to take an either/or approach to whether a stop is for road safety or some other legitimate purpose. An officer may thus have a road safety purpose in mind even if the officer simultaneously has a criminal law purpose in mind.
>
> However, if the officer does not have a legitimate road safety purpose in mind and is using the Highway Traffic Act authority as a mere ruse or pretext to stop a vehicle in order to investigate a crime, then the detention will be unlawful. ... .
>
> Consequently, the court must make a factual determination as to whether the officer had a road safety purpose in mind or whether the officer was using the Highway Traffic Act power as a ruse to conduct a criminal investigation. In determining the police purpose, the court must consider all the circumstances, including the evidence of the officers, the evidence of the detained person, the circumstances of the stop, and the police conduct during the stop. [references omitted, paras. 6-10]

The Court of Appeal found the trial judge did not determine whether the police used the *HTA* for a road safety purpose or as a ruse to search the accused's vehicle as part of a drug investigation. Rather than treating the existence of the power to arrest the accused for suspended driving under the *HTA* as dispositive, the trial judge was required to ***"determine whether the officers subjectively formed an intention to arrest the [accused] for the road safety purpose that motivates the s. 217(2) grant of authority to police,"*** said the Appeal Court. ***"If the officers did not subjectively form this intention, then their reliance on s. 217(2) was a ruse and s. 217(2) could not authorize the arrest."***

While not addressing the merits of the accused's position on the pre-textual nature of the stop or whether the purpose was to investigate the accused for driving with a suspended licence, the Court of Appeal sent the matter back for a retrial before a different judge to consider all of the circumstances in determining the legality of the accused's arrest, and whether the traffic stop was a pretext to further a drug investigation. In doing so, the Court of Appeal comments as follows:

> Without expressing any view on the merits of the application, we note that the evidence included not only the officers' explanations for the stop, but also all of the surrounding circumstances. These included the fact that the [accused] was stopped by the same members of a specialized, plainclothes police unit who had been investigating him, without success, for a drug offence; that he had been placed under surveillance at midnight; that the officers disagreed about whether they set out to investigate the [accused] for driving while suspended, or whether they decided to do so because it was a "slow night"; that the notes of one of the officers included a reference to the drug investigation; and that the police inventory of the contents of the vehicle listed only drugs, cell phones and drug paraphernalia. [para. 15]

The accused's appeal was allowed, his conviction was set aside and a new trial was ordered.

Complete case available at www.ontariocourts.on.ca

POLICE ARREST DECISION INFLUENCED IN ANY WAY BY RACIAL PROFILING RENDERS DETENTION ARBITRARY

R. v. Dudhi, 2019 ONCA 665

A police officer was conducting undercover surveillance in connection with a drug investigation. A blue BMW being driven by a white male was a vehicle of interest. A

"Police have the power to detain a suspect under the common law power of investigative detention if they reasonably suspect that the suspect is committing, or has recently committed a crime. The reasonableness of the suspicion must be assessed on an objective view of the totality of the circumstances. The reasonable suspicion test is a low threshold, since the officer's information need only objectively indicate a possibility that a suspect is committing a crime, not a probability."

police officer saw a BMW of the same colour and model and followed it. The BMW pulled into a strip mall parking lot. The officer then noticed the vehicle was not being driven by the white suspect but by a black man (the accused). The officer called off an earlier request he made for a license plate verification of the targeted vehicle, saying on the police radio, **"Disregard. It's the wrong guy here."**

The officer asked the accused's plate to be queried. He said he believed that the accused had been engaging in some counter-surveillance. The accused got out of his car and was walking and waiting, and using a cell phone. The officer learned the registered owner was subject to bail conditions, which included a term that he was not to be in possession of a cell phone. At the same time, the officer learned there were more conditions on file but a records clerk would need to look at the file to get them. Before a records clerk could pull the file to check all of the recognizance conditions, the officer decided to arrest the accused.

The accused exited the car and walked around, entered the back seat of a Mercedes SUV, then returned to his BMW and drove away. The officer suspected a drug deal. The officer followed the accused and was asked on the radio whether it was the target of their ongoing investigation. The officer responded, **"No, it's another brown guy who is a drug dealer".** The police then boxed in the BMW at an intersection and arrested the accused for failing to comply with the conditions of his release because he had a cellphone. (As it turned out, a variation to the recognizance had removed the cellphone prohibition relied upon for the arrest). The accused immediately indicated that his "no cellphone" release condition had been varied. The officers then noticed that, in addition to the cellphone he had in his hand, there was another cellphone in the centre console of the vehicle. Despite eventually producing a judicial interim release order which allowed him to possess a single cell phone, officers continued the arrest.

The accused and his vehicle were searched as an incident to arrest for further evidence of breaching a recognizance. In a recessed well under the loose plastic cover of the rear seat fold down armrest, police found a concealed compartment with a finger hole that permitted opening. Inside was 497.32 grams of cocaine. The accused was charged with possessing cocaine for the purpose of trafficking, and two counts of breach of recognizance, violating the no cellphone condition and for not abstaining from possessing narcotics.

Ontario Superior Court

The police denied that they were conducting a drug search and that the search was conducted incidental to the accused's arrest for breaching the no cellphone condition on his recognizance. The officer testified race played no part in the investigation, arrest, or search, despite the comment he made about "another brown guy who is a drug dealer." The officer claimed that his comment simply meant that this was another drug dealer, other than the initial surveillance target, and that this person was a brown male.

The accused submitted that he was arbitrarily arrested contrary to s. 9 of the *Charter*. First, he said his arrest for breaching the no cellphone condition was precipitous. The arresting officer knew that there were release conditions on the accused's electronic file and a review of those additional

"Policing decisions based on race or racial stereotypes are not, by definition, objectively reasonable decisions"

conditions might have revealed he was no longer subject to a cellphone prohibition. The decision to proceed with his arrest, without confirming that the condition justifying the arrest was still in force, was therefore arbitrary. Second, the accused suggested that the arresting officer engaged in racial profiling as evidenced by his comment, "it's another brown guy who is a drug dealer". As for the search, the accused contended that the officers conducted a pretence search, that they were searching his vehicle for narcotics under the pretence that they were searching incidental to his arrest for breaching the no cellphone condition. This, in his view, breached s. 8.

The judge found the accused's arrest was arbitrary because it was not objectively reasonable. The police had proceeded with the arrest on incomplete information. In his view, the officer had a reason and the means to inquire into whether the recognizance condition prohibiting possession of a cellphone was still in force.

The comment, "another brown guy who is a drug dealer", was troubling to the judge. He found it did not reflect well on the officer and his explanation for it was ***"not convincing"***. However, there was no link between the comment and the reason for the arrest. The comment was made after the officer believed he had grounds to arrest and did not contribute to his decision for the arrest. ***"It did not inspire any precipitous or improper action,"*** said the judge. As for the search, the judge found it was lawful as an incident to the breach of recognizance arrest. ***"A search of the interior of the vehicle for the presence of other cellphones within the reach of the driver was justified,"*** said the judge.

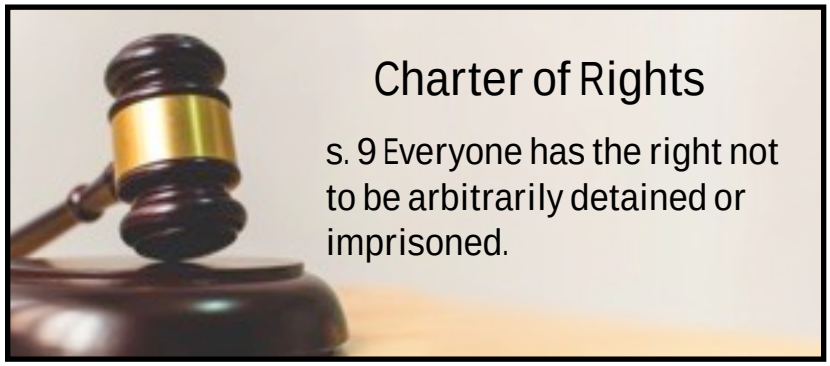
Despite the s. 9 *Charter* breach, the judge admitted the evidence under s. 24(2). The police failure to look deeper into the status of the accused's release conditions was not a deliberate effort to circumvent *Charter* rights, and fell "***closer to the less serious negligence or lack of due diligence end of the continuum"***. The judge also held that the accused could have been stopped for *Highway Traffic Act* (*HTA*) purposes or to determine whether the cellphone he was using complied with the amended release conditions. As well, he noted that the expectation of privacy in a vehicle was lower than in a home.

The accused was convicted of possessing cocaine for the purpose of trafficking, and breach of recognizance for possessing the drugs. He was acquitted of breaching his recognizance for possessing more than one cellphone because it was not proven that the second cellphone was connected to a network and capable of supporting communication.

Ontario Court of Appeal

The accused argued that the trial judge erred in rejecting his s. 9 *Charter* racial profiling challenge and in not excluding the drugs under s. 24(2).

"[T]here are two components to racial profiling. The first is the attitudinal component, which is the acceptance by a person in authority that race or racial stereotypes are relevant in identifying the propensity to offend or to be dangerous. The second is the causation component, which requires that this race-based thinking consciously or unconsciously motivate or influence, to any degree, decisions by persons in authority in suspect selection or subject treatment."



Racial Profiling

Justice Paciocco, speaking for the unanimous Appeal Court, explained that ***"racial profiling has two components: (1) an attitudinal component; and (2) a causation component"***:

> The attitudinal component is the acceptance by a person in authority, such as a police officer, that race or racial stereotypes are relevant in identifying the propensity to offend or to be dangerous. The causation component requires that this race-based thinking must consciously or unconsciously play a causal role. Meaning, race or the racial stereotype must motivate or influence, to any degree, decisions by persons in authority regarding suspect selection or subject treatment. [reference omitted, para. 55]

He further added that, even if there is a reasoned foundation for suspect selection or subject treatment other than race or racial stereotyping, such as "reasonable suspicion" or "reasonable grounds", racial profiling could still exist if race or racial stereotypes contributed to suspect selection or subject treatment. Racial profiling occurs where race or racial stereotypes are used ***"to any degree in suspect selection or subject treatment"***. He opined that ***"policing decisions based on race or racial stereotypes are not, by definition, objectively reasonable decisions"***:

> In my view, it is self-evident that a decision need not be motivated solely or even mainly on race or racial stereotypes to nevertheless be "based on" race or racial stereotypes. If illegitimate thinking about race or racial stereotypes factors into suspect selection or subject treatment, any pretence that the decision was reasonable is defeated. The decision will be contaminated by improper thinking and cannot satisfy the legal standards in place for suspect selection or subject treatment.
>
> ... Where race or racial stereotypes are used to any degree in suspect selection or subject treatment, there will be no reasonable suspicion or reasonable grounds. The decision will amount to racial profiling.

This outcome is sensible, even leaving aside questions about what reasonableness entails. If objective considerations could negate improper subjective reliance on race or racial stereotypes, the subjective component of these legal standards would be ignored. That should not be. ... [T]he subjective component of the relevant legal standards plays an important role in ensuring that the police act for legitimate purposes and turn their minds to the legal authority they possess. A body of law that permits officers to exercise their power when subjectively, their decisions are influenced by race or racial stereotypes, has little to commend it.

Moreover, it would undermine other relevant interests at stake to accept that racial profiling does not occur even when race or racial stereotypes influence a decision, unless there is no reasonable foundation for that decision. ... It not only undermines effective policing by misdirecting resources and alienating members of the community, it "fuels negative and destructive racial stereotyping". This mischief, including the offence against equality and human dignity, operates whenever race or racial stereotypes contaminate decision-making by persons in authority.

In sum, there are two components to racial profiling. The first is the attitudinal component, which is the acceptance by a person in authority that race or racial stereotypes are relevant in identifying the propensity to offend or to be dangerous. The second is the causation component, which requires that this race-based thinking consciously or unconsciously motivate or influence, to any degree, decisions by

> persons in authority in suspect selection or subject treatment. [references omitted, paras. 62-66]

If racial profiling does occur, it will be considered an aggravating factor in the s. 24(2) analysis that will elevate the seriousness of the *Charter* breach.

Although the Court of Appeal did not make a finding about whether racial profiling occurred in this case or not, it did conclude that the trial judge erred. The trial judge implicitly found the officer satisfied the attitudinal component of racial profiling by his comment. ***"The only rational interpretation of his finding is that the comment reflected [the officer's] belief that there is a link between brown skin and drug dealing,"*** said Justice Paciocco.

But the trial judge made two mistakes regarding the racial profiling causation component. ***"First, he believed improperly that the racist comment made by [the officer] could not support a racial profiling finding because it was uttered after the decision to arrest had already been made,"*** said Justice Paciocco. ***"Second, he gave undue weight to what he felt were reasonable grounds that would have justified [the accused's] arrest in any event."***

Timing of the Officer's Comment

The Court of Appeal found the trial judge erred in permitting the timing of the officer's comment to determine whether racial profiling occurred:

> As can be seen, the trial judge did not expressly find that [the officer] satisfied the attitudinal component of racial profiling. However, that finding is necessarily implicit in his reasoning.
>
> These features of the decision make plain that the trial judge found [the officer] harboured racial stereotypes, consciously or unconsciously. It is equally clear that the trial judge concluded the actual explanation for the comment was that it reflected an offensive, stereotypical link between race and crime. Even though he couched his finding gently, by referring to the "suggestion of racialized thinking inherent in the remark", the only rational interpretation of his finding is that the comment reflected [the officer's] belief that there is a link between brown skin and drug dealing. [paras. 70-71]

In giving undue and improper emphasis to the timing of the officer's comment - that it occurred after the observations that provided the grounds for arrest were made and after the officer had already decided to arrest the accused - the trial judge failed to consider all of the circumstances surrounding the police action. ***"It was an error for the trial judge to isolate the officer's comment in this way,"*** said the Court of Appeal. ***"It is well established that after-the-fact conduct by an accused person can be important circumstantial evidence in revealing their earlier state of mind. Similarly, if an officer's state of mind is a material issue that officer's relevant subsequent conduct, including comments made by the officer, can equally be used as circumstantial evidence of the officer's earlier state of mind***. And further:

> Here, the comment reflected an attitude or belief, and attitudes or beliefs do not come and go in the moment. They are held. This is an important circumstance that remains relevant, even where a statement revealing the attitude or belief is made proximate to, but after, an impugned decision has been made. In those rare cases where conscious or unconscious racist attitudes or beliefs are exposed by evidence at trial relating to the event in question, the trial judge must closely consider whether the attitudes or beliefs – shown to be held by the officer at the time – may have contributed to the decision made. This can only properly be done by closely examining all of the circumstances of the case.
>
> Here, for example, there was other evidence consistent with racial profiling. [The accused] is a man of colour who was driving an expensive car, a well-known risk factor for racial profiling. Within roughly 60 seconds of recognizing that [the accused] was not the suspect who was to be put under surveillance, [the officer] communicated [the accused's] skin colour when describing his suspicious behaviour. [The officer] also precipitously chose to arrest [the accused] before completing his inquiry into the

"For an arrest to be lawful, two things must be established. First, the arresting officer must believe that he or she has reasonable grounds to make the arrest. ... Second, viewed objectively, the grounds articulated by the arresting officer must be reasonable; that is, a reviewing court must ask itself whether a person in the shoes of the officer would be able to conclude there were reasonable grounds for the arrest."

> release conditions. These features do not make inevitable a finding that [the officer] was racial profiling at the time but, as I say, they are consistent with racial profiling. The trial judge should have paid closer attention to these features of the case when considering whether the attitude reflected in [the officer's] "brown guy who is a drug dealer" comment may have influenced the decision he made to arrest [the accused].
>
> In addition, the officer provided what the trial judge found to be an incredible explanation for the comment he made. [references omitted, paras. 79-80]

The Presence of Reasonable Grounds

It was also an error for the trial judge to hold that the presence of reasonable grounds defeated a finding of racial profiling. The Court of Appeal noted that the absence or fabrication of grounds can support an inference a detention was racially motivated while the presence of objective grounds can be relevant in providing an innocent explanation for a decision to detain. Although, in an appropriate case, it may be open to a trial judge to find an officer's demonstrated conscious or unconscious racist attitude did not influence the decisions that were made, ***"the presence of reasonable grounds does not disprove racial profiling,"*** said Justice Paciocco. ***"The presence of objective grounds does not undermine a finding of racial profiling."*** Racial profiling can nevertheless exist even if an accused's detention could otherwise be justified apart from resorting to negative stereotyping based on race.

The Search

The trial judge also erred in finding that the search incidental to the unlawful arrest complied with s. 8 of the Charter. ***"To rely on the search incident to arrest power requires a lawful arrest, and the trial judge found that [the accused] arrest was arbitrary,"*** said the Court of Appeal. ***"The entire arrest was tainted, as was the search conducted incident to it."***

s. 24(2) *Charter*

The Court of Appeal also found the trial judge made mistakes in his s. 24(2) analysis. First, the failure of the officers to "dig deeper" before arresting the accused fell more closely to the the "bad faith" end of the breach continuum and not "closer to the less serious negligence or lack of due diligence end of the continuum" as the trial judge concluded. Second, the police could not have stopped the accused under the *HTA* or otherwise. ***"Had the police used the Highway Traffic Act to pursue a drug investigation, this would have been a pretence stop, contrary to the Charter,"*** said Justice Paciocco. ***"Nor could [the accused] have been stopped, as the trial judge believed, to check to see whether the cellphone he possessed complied with the terms of this new recognizance. There were no grounds available to the officers to believe that the cellphone [the accused] was observed with did not comply with the terms of his new recognizance. He would have been arbitrarily detained had he been pulled over to check randomly whether he was complying."***

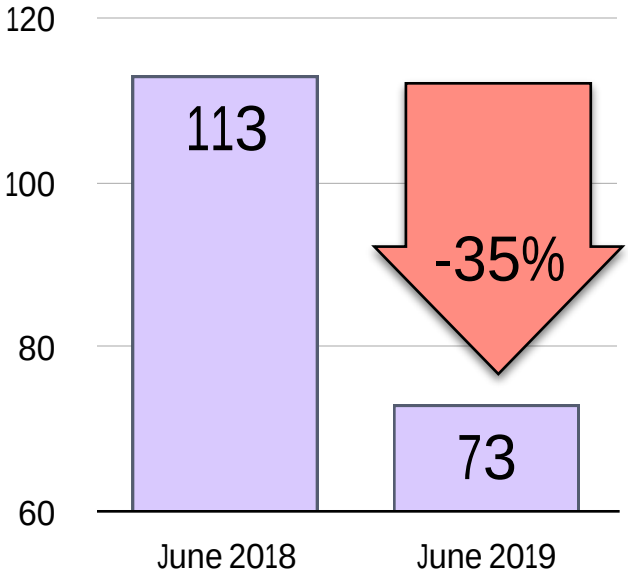
The accused's appeal was allowed, his convictions were set aside and a new trial was ordered.

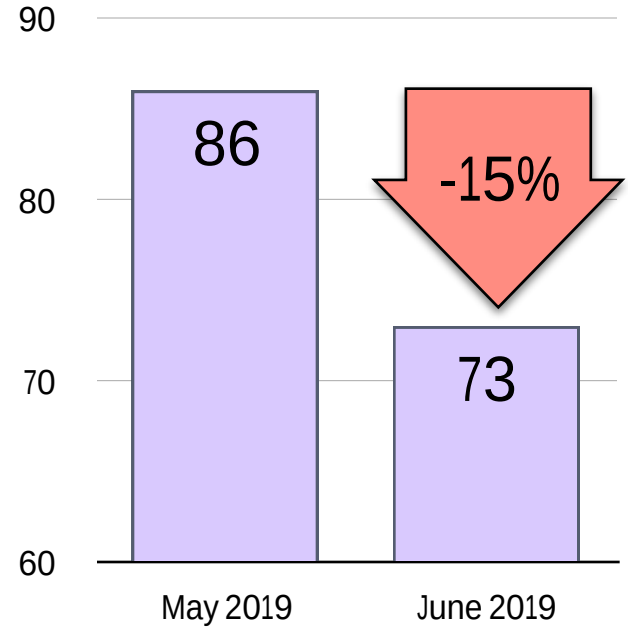
Complete case available at www.ontariocourts.on.ca

"Had the police used the Highway Traffic Act to pursue a drug investigation, this would have been a pretence stop, contrary to the Charter."

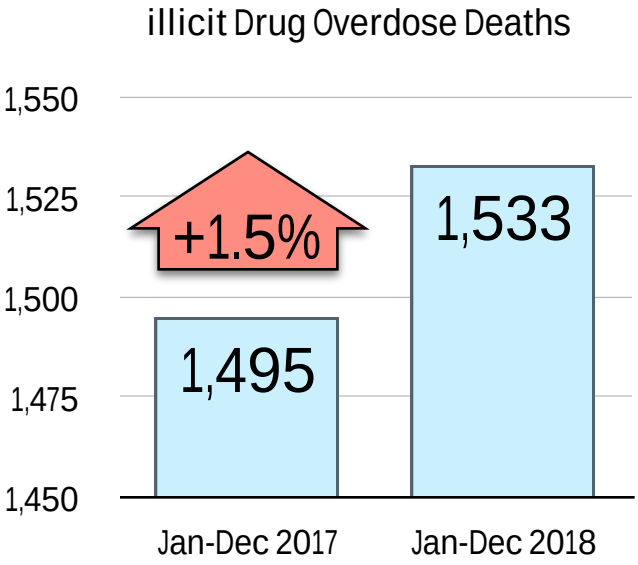
ILLICT DRUG OVERDOSE DEATHS IN 2019

The Office of BC's Chief Coroner has released statistics for illicit drug toxicity deaths (formerly known as illicit drug overdose deaths) in the province from **January 1, 2009 to June 30, 2019**. In June 2019 there were 73 suspected drug toxicity deaths. This represents a **-35%** decrease over the number of deaths occurring in June 2018 and a **-15%** decrease over May 2019.





In 2018, there were a total of **1,533** suspected drug overdose deaths. This was an increase of 38 deaths over the 2017 numbers (**1,495**).



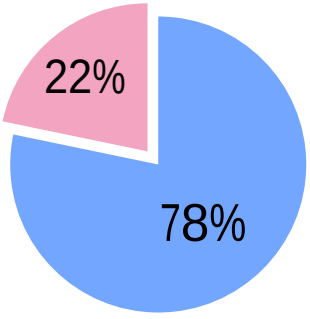
Overall, the 2018 statistics amount to about **four (4) people dying every day of the year.**

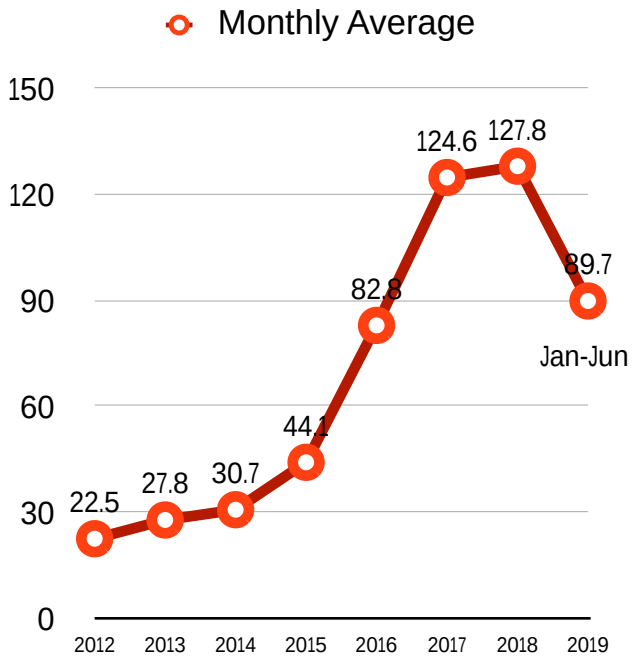
The **1,533** toxicity deaths last year amounted to more than a **360%** increase over 2013. The report also attributed fentanyl laced drugs as accounting for the increase in deaths.

People aged 30-39 were the hardest hit so far in 2019 with **146** illicit drug toxicity deaths followed by 40-49 year-olds and 50-59 years-old, at **118** deaths in each category. People aged 19-29 had **95** deaths. Vancouver had the most deaths at **144** followed by Surrey (**72**), Victoria (**28**), Abbotsford (**24**), Kamloops (**19**), Burnaby (**19**), and Kelowna (**15**).

Deaths by gender

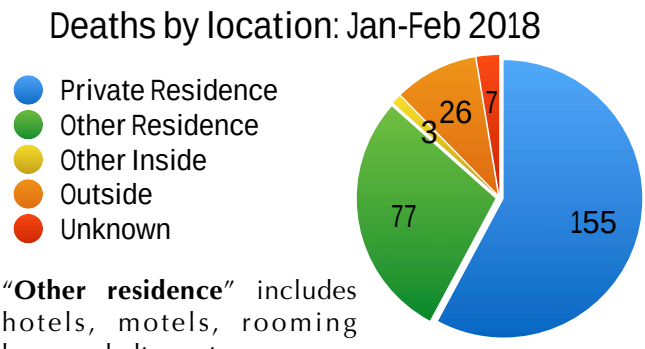
Males continue to die at almost a **4:1** ratio compared to females. In January 2019, **421** males had died while there were **117** female deaths.





The 2019 data indicates that most illicit drug toxicity deaths (**87%**) occurred inside while **12%** occurred outside. For **7** deaths, the location was unknown.

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



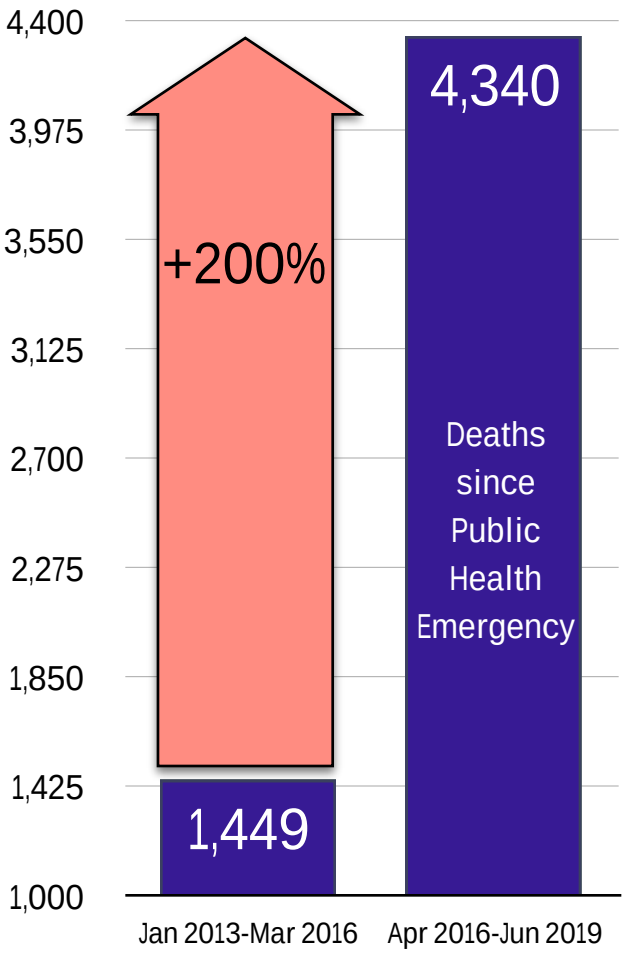
"**Other residence**" includes hotels, motels, rooming houses, shelters, etc.

"**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

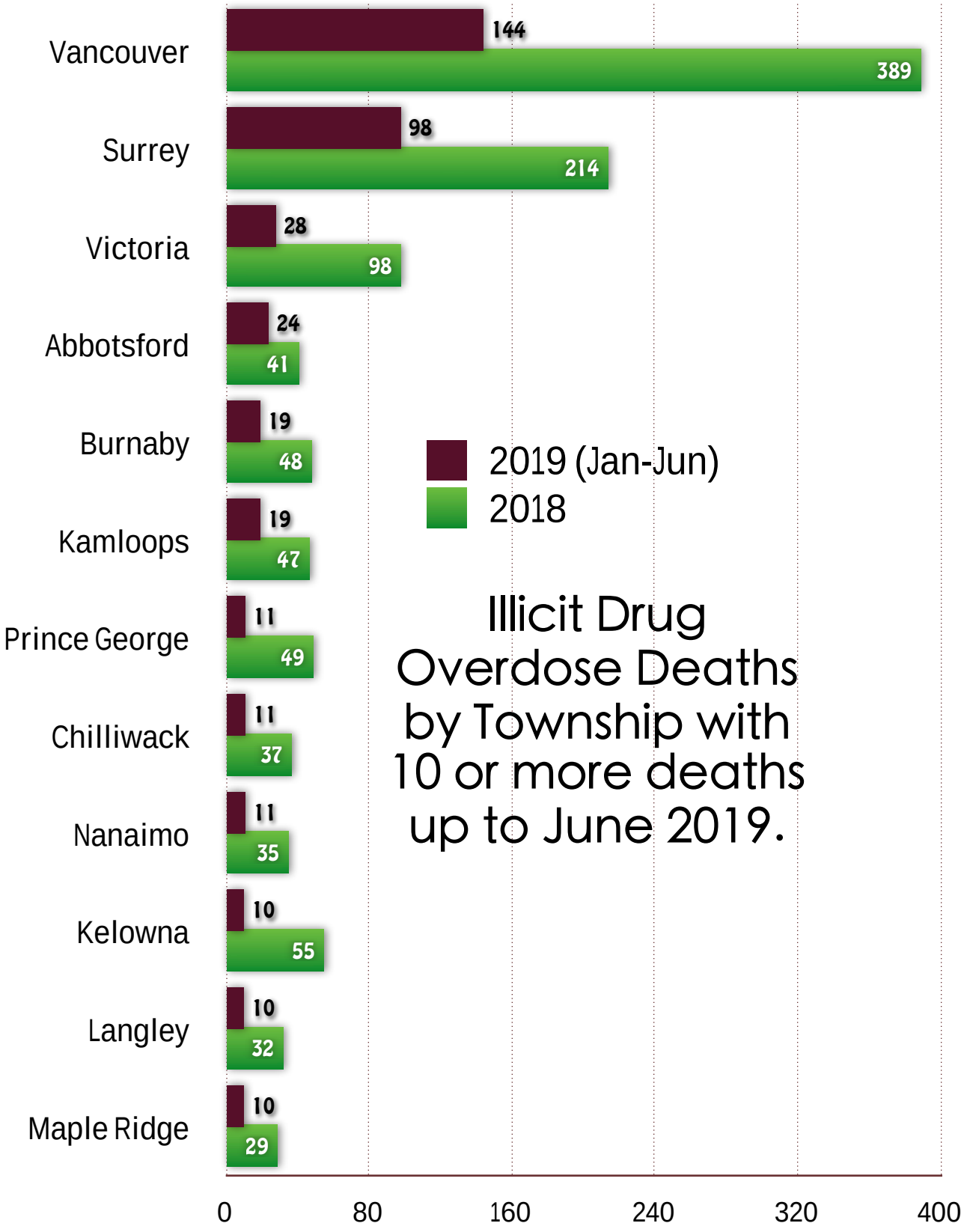
In April 2016, BC's provincial health officer declared a public health emergency in response to the rise in drug overdoses and deaths. The number of overdose deaths in the **39** months preceding the declaration (Jan 2013-Mar 2016) totaled **1,449**. The number of deaths in the **34** months following the declaration (Apr 2016-Jun 2019) totaled **4,340**. This is an increase of almost **200%**.



Source: Illicit Drug Toxicity Deaths in BC - January 1, 2009 to June 30, 2019. Ministry of Public Safety and Solicitor General, Coroners Service. August 16, 2019.

TYPES OF DRUGS

The top five detected drugs relevant to illicit drug overdose deaths from 2016 - 2018 were fentanyl and its analogues, which was detected in **81.3%** of deaths, cocaine (**50.1%**), methamphetamine/amphetamine (**31.9%**), ethyl alcohol (**27.0%**), and heroin (**17.4%**).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2019 (Jan-Jun)
2018
Illicit Drug Overdose Deaths by Township with 10 or more deaths up to June 2019.
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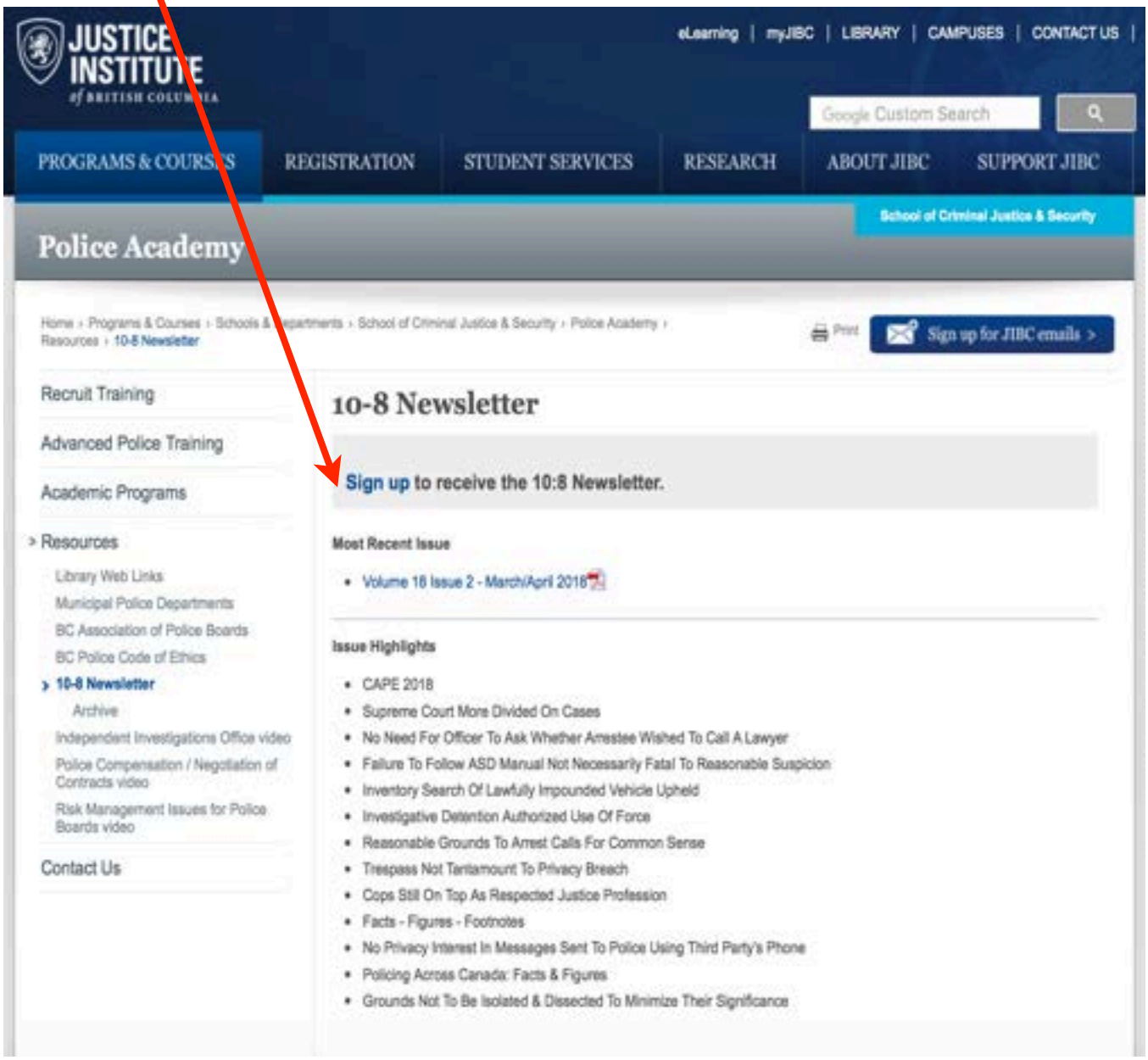

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