POLICE ACADEMY

715 McBride Blvd. New Westminster B.C. V3L 5T4

IN SERVICE:10-8

A PEER READ PUBLICATION

A newsletter devoted to operational police officers across British Columbia.

IN MEMORIAL

On May 23, 2003, 49-year-old Ontario Provincial Police Senior Constable Phil Shrive died in hospital as a result of injuries he sustained in an on duty two-vehicle collision that occurred on May 16, 2003.

Constable Shrive began his policing career with the OPP in 1974. His most recent postings included West Carleton Detachment and upon its closing, he transferred to Renfrew Detachment in 1999.

Senior Constable Shrive was a dedicated officer who was well liked and respected by his peers and members of the community. He was also a Branch President of the Ontario Provincial Police Association working diligently on behalf of his fellow officers. He is survived by his wife and 4 children.

On June 10, 2003, 35-year-old RCMP Constable Ghislain Maurice of the Strathcona County RCMP Detachment in Edmonton, Alberta died just before 9 a.m. when his unmarked police cruiser collided with a gravel truck. The accident happened on Highway 21, just southeast of Sherwood Park. The driver of the truck was not seriously hurt.

Cst. Maurice was on duty as a member of the detachment's Traffic Services Unit at the time of his death. He was a 14-year veteran of the force and is survived by his wife Kathy and their 3-year-old daughter Emilie.

The above information was provided with the permission of the Officer Down Memorial Page: available at www.odmp.org/canada

NEW STAFF MEMBERS AT POLICE ACADEMY

The Police Academy is pleased to announce the arrival of a new firearms instructor and a new legal studies instructor to its recruit training staff.

Sgt. Dave Schmirler is a 17-year police veteran who started his police career in 1986 with the New Westminster Police Service. He transferred to the Abbotsford Police Department in 1995. He has been a tactical unit operator (ERT) for 15-years with both New Westminster and Abbotsford and is the founding member and first serving president of the British Columbia Tactical Officers Association. Sgt. Schmirler has been a competitive IPSC shooter in the past and has been a firearm's trainer and transition instructor for about 12 years. Prior to coming to the Police Academy he was assigned as a Detective to the General Investigative Section in Abbotsford and has prior experience in the Drug Section, Street Crime Unit, and as a certified Field Training Officer.

Sgt. Kelly Seib is a 10-year police officer who started her career in 1993 with the Delta Police Department. Prior to policing she lived on Vancouver Island where she taught Middle School

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in the Saanich School District. Sgt. Seib recently completed a four-year Detective assignment in the General Investigation Unit where she specialized in investigations pertaining to Sexual Assaults and Child Abuse. She also Coordinated the Department's Violent Crimes Linkage Analysis System (ViCLAS) throughout her tenure as a Detective.

Welcome aboard!!!

QUALITY & CLARITY OF VIDEO IMAGES RAISES A REASONABLE DOUBT

R. v. Moyou, 2003 BCPC 0063

Following a bank robbery, the police created wanted posters using images of the suspect obtained from the bank's surveillance videotapes that recorded the incident. As a consequence, three correctional officers recognized the suspect in the wanted posters as the accused. A photograph of the accused taken at the time of his release from the correctional facility was then used by the police in a photo line up and was shown to the employees of the bank. The line up consisted of 6 photos presented as a package and the accused was the only native person in the line up. Four of seven employees shown the line up selected the accused in varying degrees of certainty and a robbery charge was laid against the accused. At trial, the accused denied the robbery. However, all four employees made in-court identifications of him and the correctional officers identified the accused from the videotaped images shown in court. No circumstantial or forensic evidence was presented. Thus, identification became the sole issue.

The Crown's case of identification relied on the following:

- the identification by the parole officers of the person in the wanted posters;
- the photo line up identification by the four bank employees; and
- the identification of the accused by the bank employees and the correctional employees from the videotape images shown at trial.

British Columbia Provincial Court Justice Yee found there was a reasonable doubt respecting the identity of the accused as the perpetrator of the robbery. His identification as the robber was made from a correctional photograph, not from the videotape image itself. If the correctional officers were wrong about their recognition of the accused from the wanted posters, the identification chain would be broken and the photo line up evidence would be meaningless. Although there was no doubt that the correctional officers were honest and many of the features of the robber in the video and the accused's photo used in the line up were similar, the quality and clarity of the videotape images left a reasonable doubt in the Court's view. Justice Yee stated:

> The videotape captured mostly an overview of staggered images of the robbery. Most of the recorded images were out of focus. For the most part, the recording of the interactions between the robber and the bank tellers coincide with the numberings on the videotape and thus made it very difficult to see. Other than five waist high shots of the robber, there were no close up shots on the face. Of those five shots, only three could possibly be used for identification purposes. Furthermore, the robber was wearing a baseball-cap which not only covered up the forehead but also caused a shadow over the eyes and parts of his face. All these make identification of the robber from the images on the videotape exceedingly difficult. Since the pictures in the wanted poster came from the videotape images, the difficulty persists.

Complete case available at www.provincialcourt.bc.ca

Note-able Quote

Admission of ignorance is often the first step in our education—Dr. Stephen R. Covey

2004 POLICE LEADERSHIP CONFERENCE APRIL 5-7, 2004

Mark your calendar! The British Columbia Association of Chief's of Police, as the major sponsor, along with the Ministry of Public Safety and Solicitor General and the Justice Institute of British Columbia will be hosting the "**Police Leadership 2004 Conference**" April 5 to 7, 2004 at the Westin Bayshore in beautiful Vancouver, British Columbia.

The conference will emphasize leadership as an activity, not a position, and provide an opportunity for participants of all ranks from police agencies across Canada, the United States, and beyond to involve themselves in leadership initiatives. A carefully chosen list of speakers will provide a first class opportunity to hear some of the world's outstanding authorities on leadership.

For more updates on this conference as they develop, please bookmark:

www.policeleadership.org

NEW (PROPOSED) LAWS UPDATE

There are several new Bills before Parliament that may impact police officers and how we do our job. These Bills include C-32 and C-38.

Bill C-32 (first reading only: April 11, 2003)

Use of Force on Aircraft

A new law has been introduced that would permit the use of force by persons (pilots, staff, or passengers) on an aircraft to use reasonable force to prevent the commission of an offence that would likely injure the aircraft or a person or property on board it:

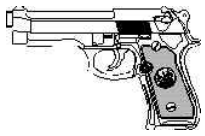
s.27.1 *Criminal Code* (proposed)

(1) Every person on an aircraft in flight is justified in using as much force as is reasonably necessary to prevent the commission of an offence against this Act or another Act of Parliament that the person believes on reasonable grounds, if it were committed, would be likely to cause immediate and serious injury to the aircraft or to any person or property therein.

(2) This section applies in respect of any aircraft in flight in Canadian airspace and in respect of any aircraft registered in Canada in accordance with the regulations made under the Aeronautics Act in flight outside Canadian airspace.

Application for Weapons Warrant to Seize

In response to the Ontario Court of appeal ruling in *R. v. Hurrell* (2002) Docket:C36968 (OntCA) finding s.117.04 of the *Criminal Code* unconstitutional, a newly worded section has been proposed. In the current wording of the *Code*, the section does not require reasonable grounds to believe that weapons or other items sought are likely to be found on the person or premises o be searched. In the proposed new section, the justice requires reasonable grounds to believe that a person possesses one of the specified items in a building, receptacle, or place and it is not desirable for them to possess the items.



s.117.04(1) *Criminal Code* (proposed)

Where, pursuant to an application made by a peace officer with respect to any person, a justice is satisfied by information on oath that there are reasonable grounds to believe that the person possesses a weapon, a prohibited device, ammunition, prohibited ammunition or an explosive substance in a building, receptacle or place and that it is not desirable in the interests of the safety of the person, or of any other person, for the person to possess the weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, the justice may issue a warrant authorizing a peace officer to search the building, receptacle or place and seize any such thing, and any authorization, licence or registration certificate relating to any such thing, that is held by or in the possession of the person.

Subsection (2) remains unchanged. Warrantless searches in exigent circumstances are still permissible provided the pre-conditions in s.117.04(1) are satisfied.

Traps Likely to Cause Bodily Harm

A new section outlawing the use of deadly traps in places used to commit offences has been introduced in parliament. Canada's Minister of Justice Martin Cauchon stated:

> We have to protect emergency workers like fire fighters on the front line who may be exposed to dangerous situations like marijuana grow operations or clandestine drug labs. The nature of these criminal activities creates a risk of fire, with volatile chemicals used in drug labs and electric power stolen through unsafe meter bypasses. If fire fighters or police officers are put at risk, injured or killed by traps set to defend these criminal enterprises from law enforcement or rival gangs, those who set the traps must feel the full weight of the law.

s.247 *Criminal Code* (proposed)

(1) Every one is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years, who with intent to cause death or bodily harm to a person, whether ascertained or not, (a) sets or places a trap, device or other thing that is likely to cause death or bodily harm to a person; or (b) being in occupation or possession of a place, knowingly permits such a trap, device or other thing to remain in that place.

(2) Every one who commits an offence under subsection (1) and thereby causes bodily harm to any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

(3) Every one who commits an offence under subsection (1), in a place kept or used for the purpose of committing another indictable offence, is guilty of an indictable offence and is liable to a term of imprisonment not exceeding ten years.

(4) Every one who commits an offence under subsection (1), in a place kept or used for the purpose of committing another indictable offence, and thereby causes bodily harm to a person is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years.

(5) 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 life.

Bill C-38 (first reading only: May 27, 2003)

Several amendments to the *Controlled Drugs and Substances Act* (CDSA) have also been introduced. These proposed changes include reducing the maximum punishment, by fine only, and the possibility of "ticketing" processes for minor marihuana possession offences. Penalties for growing marihuana would be increased. Canada's Minister of Justice Martin Cauchon stated:

> These legislative reforms will ensure that our possession laws can be enforced more effectively across Canada while at the same time toughen penalties against cannabis grow operators. Our message to Canadians and especially our young people is clear - marijuana is harmful and it will remain illegal.

Production Offences

In its bid to toughen penalties against marihuana growers, Parliament is proposing to double the current maximum sentence (proposed s.7(2) *CDSA*). Under the present law of producing marihuana (which includes cultivating, propagating, or harvesting the substance), a convicted grower can only receive a maximum of 7 years in prison. Under the new proposal, maximum sentences are based on the number of marihuana plants grown. The following sentencing grid shows the corresponding penalty attached to the number of plants:

# of plants	Offence type	Punishment
1-3	Summary only	≤ $5000 fine and/or ≤ 1 year in prison
4-25	Dual	by indictment • < 5 yrs. prison by summary • ≤ $25,000 and/or • < 18 months prison
26-50	Indictable	≤ 10 yrs. prison
51+	Indictable	≤ 14 yrs. prison

Possession Offences

This new legislation will "de-criminalize", but not "de-legalize", possession of small amounts of marihuana. Therefore, enforcement action can still be taken. Possession of amounts less than 30 grms. of marihuana or less than 1 gram of hashish remain summary conviction only offences. However, maximum penalties for these offences have been reduced in some cases.

Offence	Drug Amount	Max. punishment
s.4(5) *CDSA* summary only	hashish ≤ 1 grm.	Adult = $300 fine YO = $200 fine
s.4(5.1) *CDSA* summary only	marihuana ≤ 15 grms.	Adult = $150 fine YO = $100 fine
s.4(5.2) *CDSA* summary only	If person in possession of ≤ 1 grm. of hashish or ≤ 15 grms. of marihuana is operating or in care & control of a • motor vehicle • railway equip. • aircraft, or • vessel	Adult = $400 fine YO = $250 fine
s.4(5.4) *CDSA* summary only	marihuana more than 15 grms., but not more than 30 grms.	Option ≤ $1000 fine and/ or 6 months in prison *Contraventions Act* process: Adult = $300 fine YO = $200 fine

Marihuana amounts in excess of 30 grams or hashish amounts in excess of 1 gram will continue to be a dual offence. If possession of these amounts proceeds by indictment, the maximum punishment available is imprisonment for a term not exceeding 5 years less a day. If the offence is proceeded summarily, a first offence can draw up to 6 months in prison and/or a $1000 fine while a second or subsequent offences can bring up to one year in prison and/or a $2000 fine.

Sentencing Reasons

A new section will place an affirmative duty on judges in some cases to justify why a person is not sent to jail (proposed s.10(2.1) *CDSA*). If an accused is convicted of a production offence where 4 or more plants are involved, but is not sentenced to imprisonment, the Court must give reasons why if:

- the accused used real property belonging to a 3rd party to commit the offence;
- the production was a potential security, health, or safety hazard to children at the location or in the immediate area;
- the production was a potential public safety hazard in a residential area; or
- the location was set with a trap or other device likely to cause death or bodily harm.

Complete copies of these and other proposed Bills are available at www.parl.gc.ca

TAXI PASSENGER NOT NECESSARILY DETAINED WHEN DRIVER STOPPED

R. v. Charles,
[2003] O.J. N0. 1186 (OntCJ)

Two police officers were on patrol in an area known for drug transactions when they observed a male (not the accused) enter a taxi facing the wrong way on a one-way street and the taxi drive off, going the wrong way. The police followed the cab and stopped it a short distance away. As the driver

got out of the vehicle he was told to get back in. As police approached the tax, they noticed the accused, a passenger, reach into his waistband. In response to the question what he was doing in town, the accused replied he was with his buddy. He verbally identified himself when requested and his cell phone, which flashed several times, went unanswered. He would just hang up repeatedly.

Before a CPIC return on the accused's identification, he was asked whether he had any outstanding charges. The accused replied he was recently released from jail for possession of cocaine and careless driving. At this point, the accused was arrested for possession of a narcotic, read his rights to counsel and provided the caution. He stated he had an "8-ball", but that he had swallowed it. The accused was searched and drugs were found. The accused ran from police but was tackled a short distance away. While trying to subdue him, the officer put the drugs down. The accused took the drugs, placed them his mouth, and tried to swallow. The officer grabbed him so he could not swallow. This to prevent the accused from dying and to preserve the evidence.

The accused brought an application in the Ontario Court of Justice seeking the evidence (statements made and crack cocaine seized) be excluded under s.24(2) of the *Charter*. He argued that his rights under s.8 (search and seizure), s.9 (arbitrary detention), and s.10(b) (right to counsel) had been violated.

Was there a Detention

Justice Mocha of the Ontario Court of Justice concluded that the accused, a passenger in the taxi, was not detained, either physically or psychologically. There were no demands or threats made to him; he was simply asked questions in a polite and non-intimidating manner. "Although [the accused] was being questioned by a police officer, there was nothing about the circumstances, the manner in which he was questioned, or the officer's behaviour that indicated he had assumed control over the movements of [the accused]." The taxi driver was stopped by police for a *Highway Traffic Act* offence and "the stopping of the driver does not equate to detention of a passenger unless there is something more to indicate detention."

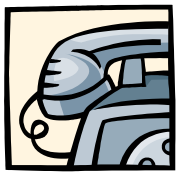
Since there was no detention, there was no obligation to inform the accused of his right to counsel prior to his arrest nor was it necessary to assess its arbitrariness. Even if there had been a detention, it would not have been arbitrary because the officer had an articulable cause.

The Search

Justice Mocha concluded that the search was reasonable and did not constitute a s.8 *Charter* violation:

> That leads me to the section 8 argument which is that [the officer] did not have objectively reasonable grounds to believe [the accused] was in possession of a narcotic and therefore the arrest was unlawful. I find the totality of the circumstances provide objectively reasonably grounds for a lawful arrest. They include: the location being a well-known drug area, the unusual movements of the taxi, the gesture to the waistband, the cell phone and the prior record for possession of a narcotic. I find the arrest was lawful and the search incident to that arrest was reasonable. The fact that [the officer] did not search his waistband first does not cause me concern about his credibility nor does it affect the reasonableness of the search. I also find that the questioning by [the officer] did not constitute a search. Consequently, there has been no violation of the applicant's rights under section 8 of the Charter.

DID YOU KNOW…



…that s. 7 of British Columbia's *Offence Act* requires the police to provide a person taken into custody to at least one private telephone call, on

their request, during the first 12 hours of their custody. This "one call" does not appear to be limited to counsel, but might include other persons the arrestee wishes to communicate with.

s.7 Offence Act

(1) Every person who is taken into custody by a peace officer is entitled, on request to the person responsible for his or her custody, to have access to, and the private use of, a telephone as soon as possible at least once during the first 12 hours of his or her custody.

(2) A person who, without reasonable excuse, hinders or prevents a person in custody from exercising the right granted by subsection (1), commits an offence.

CLASS 90 GRADUATES

The Police Academy is pleased to announce the successful graduation of recruit Class 90 as qualified municipal constables on May 9, 2003.

DELTA
Cst. Jody Ackerman
Cst. Russell Eke
Cst. Kevin Hilliard
Cst. Garth Hoffman
Cst. Lauren Koop
Cst. James Sanberg
Cst. Harbinder Sidhu

NEW WESTMINSTER
Cst. Robert Boyd

WEST VANCOUVER
Cst. Brian Wong

VANCOUVER
Cst. Melissa Apcar
Cst. Stuart Black
Cst. Kenneth Fincham
Cst. James Hooper
Cst. Lisa Horne
Cst. Jonathan Kempton
Cst. Mike Loeppky
Cst. Scott Maden
Cst. Troy Peters
Cst. Tracey Prentice
Cst. Michael Ritchie
Cst. Shawn Robson
Cst. Aman Samra
Cst. Kenneth Stanworth
Cst. Jason Tremblay
Cst. Norman Yee

Congratulations to Cst. Garth Hoffman (Delta), who was the recipient of the British Columbia Association of Chiefs of Police Shield of Merit for best all around recruit performance in basic training. Cst. Hoffman also received the Abbotsford Police Association Oliver Thomson Trophy for outstanding physical fitness. Cst. Kenneth Stanworth (Vancouver) received the Vancouver Police Union Excellence in Academics award for best academic test results in all disciplines. Cst. Shawn Robson (Vancouver) received the British Columbia Federation of Police Officers Valedictorian award for being selected by his peers to represent his class at the graduation ceremony. Cst. James Sandberg (Delta) was the recipient of the Abbotsford Police Recruit Marksmanship award for highest qualification score during Block 3 training (48/50). Mr. Dirk Ryneveld, Q.C., the British Columbia Police Complaint Commissioner, was the keynote speaker at the ceremony.

FAILING TO ASK ABOUT SUCCESS IN CONTACTING COUNSEL VIOLATES *CHARTER* RIGHT

R. v. Rezanoff, 2003 ABQB 292

The accused was arrested for impaired care and control, and consuming alcohol in a vehicle after a police officer saw him sitting in the driver's seat of a semi trailer truck, start it, and turn the lights on. He was informed of his right to counsel, cautioned, and read the breath demand. The accused agreed to accompany the officer to the police station so he could seek advice from a lawyer. At the station the accused asked to speak to a lawyer and was brought to a telephone room where he remained for 7 minutes. The officer saw him on the phone part of this time and when he was finished, the accused was escorted to the breathalyzer room where he refused to provide a breath sample. At trial in Alberta Provincial Court, the accused was convicted of failing to provide a breath sample.

The accused appealed to the Alberta Court of Queen's Bench arguing that his s.10(b) *Charter*

right to counsel had been breached because he did not get legal advice from a lawyer during the 7 minute period. Section 10 requires that once an arrestee indicates a desire to contact a lawyer, the police must provide a reasonable opportunity to do so and must also refrain from eliciting evidence until the opportunity has been provided. Justice Macklin accepted the accused's argument, stating:

> In the particular circumstances of this case, I am satisfied that seven minutes in a telephone room at 1: 20 a. m. is not a reasonable opportunity to exercise one's right to contact counsel. The first implementational duty [providing a reasonable opportunity] was breached, and an infringement of the [accused's] rights has been made out. I am also satisfied that the [accused] was as reasonably diligent as he could be during that time span in trying to call a lawyer or someone who could provide him with the advice he was seeking.
>
> Given the peculiar circumstances of this case and the brief period the appellant had to contact counsel and both instruct and obtain advice from counsel, [the officer] should have, at the very least, asked the appellant at 1: 27 if he was successful in contacting a lawyer or obtaining advice. …. In this case, as I have stated, the [accused] did not have a reasonable opportunity to contact counsel. Had [the arresting officer] simply asked the question as to whether counsel had been contacted, he could then have taken steps to ensure that a reasonable opportunity to do so was then afforded to the [accused]. [references omitted]

And further:

> In this case, [the arresting officer] did not ask whether counsel had been contacted. Had he done so, he could have determined whether or not further reasonable opportunity must be given or, alternatively, whether the [accused] was waiving his right to counsel, which would have triggered the additional informational requirement [of the police obligation to hold off from eliciting incriminatory evidence].

The accused had established on a balance of probabilities that his right protected under s.10(b) had been infringed and the evidence of the refusal was inadmissible. The appeal was allowed and an acquittal entered.

Complete case available at www.albertacourts.ab.ca

s.495 *CRIMINAL CODE* POLICE POWERS OF ARREST IN REVIEW

Sgt. Mike Novakowski

The *Criminal Code* defines a peace officer in s.2:

> "peace officer" includes…(c) a police officer, police constable, bailiff, constable, or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process,

This section does not create a police force, but provides that persons deriving their authority from other sources be treated as "peace officers" enabling them to enforce the *Criminal Code* within the scope of their pre-existing authority and to benefit from certain protections granted only to peace officers[1]. The general power of arrest for peace officers is found in section 495(1) of the *Criminal Code*:

> s.495(1) *Criminal Code*
> 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.

[1] Nolan v. the Queen (1987) 34 *C.C.C.* (3d) 289 (*S.C.C.*) at p.298.

By application of the *Interpretation Act*, this power of arrest extends to all federal statutes that create offences, but do not create their own arrest powers[2]:

> s.34(2) *Interpretation Act*
> All the provisions of the *Criminal Code* relating to indictable offences apply to indictable offences created by an enactment, and all the provisions of that Code relating to summary conviction offences apply to all other offences created by an enactment, except to the extent that the enactment otherwise provides.

For example, the *Controlled Drugs and Substances Act* (CDSA) creates many drug related offences however there are no arrest powers within the *CDSA*. Thus, the police may use the general arrest powers found in s.495 of the *Code* to arrest for *CDSA* offences.

Disjunctively read, s.495 permits arrest without warrant under the following five circumstances:

1. a person who has committed an indictable offence;
2. a person the peace officer believes on reasonable grounds has committed an indictable offence;
3. a person the peace officer believes on reasonable grounds is about to commit an indictable offence;
4. a person the peace officer finds committing a criminal offence; or
5. a person the peace officer believes on reasonable grounds is the subject of a warrant of arrest or committal that is in force within the territorial jurisdiction in which the person is found.

Has Committed an Indictable Offence

This provision is found in s. 495(1)(a) and covers a situation where the peace officer has personal knowledge that the person has committed an indictable offence:

> s.495(1)(a) *Criminal Code*
> A peace officer may arrest without warrant…a person who has committed an indictable offence…

[2] See for example R. v. Bienvenue (2001) 155 C.C.C. (3d) 442 (Que. C.A.)

"has committed" means the arresting officer has personal knowledge of the offence. This may require that the offence was committed in the officer's presence and observed by them. In *R. v. Klimchuk* (1991) 67 C.C.C (3d) 385 (B.C.C.A.), Justice Wood of the British Columbia Court of Appeal stated:

> Looking in particular at the first part of s.495(1)(a), a peace officer is entitled to arrest a person who has committed an indictable offence. Before such an arrest can be made, the peace officer must know that the arrestee has committed an indictable offence. In order for him to know that, he must have witnessed the indictable offence occurring. Correctly construed, then, this first part of the provision covers those few situations where the arresting officer, having personally witnessed the commission of an indictable offence could not prevent it or perfect an arrest before its completion.

"indictable offence" includes both strictly indictable offences and dual procedure offences.

> s.34(1) *Interpretation Act*
> Where an enactment creates an offence, (a) the offence is deemed to be an indictable offence if the enactment provides that the offender may be prosecuted for the offence by indictment;…

Believes on Reasonable Grounds Has Committed an Indictable Offence

This provision is also found in s. 495(1)(a) of the *Criminal Code* and covers the situation where the peace officer has reasonable grounds to believe that an indictable offence has been committed.

> s. 495(1)(a) *Criminal Code*
> A peace officer may arrest without warrant…a person… who, on reasonable grounds, he believes has committed… an indictable offence…

In *R. v. Biron* (1976) 2 S.C.R. 56 (S.C.C.), Justice Martland for the majority of the Supreme Court of Canada stated:

> This paragraph, limited in its application to indictable offences, deals with the situation in which an offence has already been committed… The

peace officer is not present at its commission. He may have to rely upon information received from others. The paragraph therefore enables him to act on his belief, if based on [reasonable] grounds.

"reasonable grounds to believe" means the facts within the officer's knowledge would satisfy a reasonable person standing in the shoes of the officer that there is reason to believe that the person has committed an indictable offence.

The police officer does not have to have personally witnessed an indictable offence, but must possess reasonable grounds to believe that an indictable offence has been committed. The reasonable grounds for belief could be a combination of observations, information, and experience. Even if it turns out that the person is later acquitted of the charge, the acquittal does not render the arrest unlawful, as long as there were reasonable grounds upon which the police officer acted[3]. Of course, the arresting officer must be able to articulate and explain those grounds in order to justify the arrest. This underscores the importance of accurate, timely, and detailed note-taking.

"indictable offence" includes both strictly indictable offences and dual offences[4].

Believes on Reasonable Grounds is about to Commit an Indictable Offence

This provision, also found in s. 495(1)(a) of the *Criminal Code*, applies to circumstances where a peace officer has reasonable grounds to believe that the person is about to commit an indictable offence.

s.495(1)(a) *Criminal Code*
A peace officer may arrest without warrant (a) a person… who, on reasonable grounds, he believes … is about to commit an indictable offence…

This section provides the power to arrest someone for an apprehended or probable future indictable offence. To properly invoke this authority, "the police officer must have reasonable grounds for believing that the anticipated conduct,…the commission of an indictable offence, will likely occur if the person is not detained"[5].

This provision does not create an offence but allows for an arrest as a preventative (non-retributive) measure. An arrest in this case prevents the probability of the person committing an offence which the peace officer reasonably believes would be committed if the arrest does not take place. For example, in *R. v. Beaudette* (1957) 118 C.C.C. 295 (Ont.C.A.), the court upheld the conviction of an accused on a charge of resisting arrest after he was arrested because he was intoxicated and the police believed he was intending to drive a motor vehicle when he was observed leaving a liquor establishment..

However, since the person has not committed an offence, the person must be unconditionally released as soon as practicable after either the peace officer or the officer in charge is satisfied that the continued detention of that person in custody is no longer necessary in order to prevent the commission of the indictable offence. This release is required pursuant to the provisions of s.503(4) of the *Criminal Code*.

s. 503(4) *Criminal Code*
A peace officer or an officer in charge having the custody of a person who has been arrested without warrant as a person about to commit an indictable offence shall release that person unconditionally as soon as practicable after he is satisfied that the continued detention of that person in custody is no longer necessary in order to prevent the commission by him of an indictable offence.

This preventative arrest provision may be useful, particularly in volatile circumstances such as domestic situations or bar disturbances where, upon police attendance, no criminal offence has yet taken place. In many of these situations, an aggressive party may be under the influence of alcohol and agitated, and leaving them in the

[3] See R. v. McKibbon (1973) 12 C.C.C. (2d) 66 (B.C.C.A.)
[4] see s.34(1) Criminal Code
[5] Brown v. Durham (Regional Municipality) Police Force (1998) 43 O.R. (3d) 223 (Ont.C.A.) appeal to S.C.C. granted [1999] S.C.C.A. No. 87

circumstance would almost certainly result in an assault. If alternative measures do not diffuse the situation, this provision provides the police with the authority to take a preventative measure in arresting and removing the aggressor, provided the requisite grounds for belief exist.

However, if there are reasonable grounds to believe that an indictable offence has been committed (e.g. a threatening or an assault), then the person may be arrested for that substantive offence. By arresting for the substantive offence, the person may be detained by the police where pre-trial conditions of release may be imposed, such as no contact orders, non attendance orders, or alcohol prohibitions. It must be remembered that a person arrested only on the preventative authority as a person about to commit an indictable offence must be released unconditionally, and therefore no conditions of release may be imposed[6].

"indictable offence" includes both strictly indictable offences and dual offences[7].

Finds Committing a Criminal Offence

This provision is found in s. 495(1)(b) of the *Criminal Code* and applies to circumstances where a peace officer finds a person committing a criminal offence.

> s. 495(1)(b) *Criminal Code*
> A peace officer may arrest without a warrant…(b) a person whom he finds committing a criminal offence,

"**finds committing**" has been both strictly and liberally interpreted by the courts. Strictly speaking, in *R. v. Biron*, Justice Martland stated:

> Paragraph (b) applies in relation to any criminal offence and it deals with the situation in which the peace officer himself finds an offence being committed. His power to arrest is based upon his own observation. Because it is based on his own discovery of an offence actually being committed there is no reason to refer to a belief based upon reasonable grounds.

Furthermore, "the validity of an arrest under this paragraph must be determined in relation to the circumstances which were apparent to the peace officer at the time the arrest was made"[8]. In the event the person arrested is later acquitted, the police will nonetheless be protected from liability of false arrest, assault etc., as long as the officer had reasonable grounds to believe that the person was apparently committing a criminal offence at the time of their arrest[9]. To do otherwise would mean that, absent a conviction, a peace officer could not be certain that an offence had been committed and could not arrest in such circumstances[10]. Simply stated "the power to arrest without warrant is given where the peace officer [themselves] finds a situation in which a person is apparently committing an offence[11]". In other words, this provision could be interpreted as requiring reasonable grounds to believe the person is committing a criminal offence.

In addition to the strict interpretation of "finds committing" (actually witnessing the offence), a liberal interpretation of "finds committing" has been considered. In *Frey v. Fedoruk, Stone and Watt* (1949) 95 C.C.C. 206 (B.C.C.A.) reversed on other grounds (1950) 97 C.C.C. 1 (S.C.C.) the court found that a police officer who arrives on the scene shortly after an offence may subsequently make an arrest under this provision provided the arrest and the "seeing" are intimately connected. In this case a private person arrested the accused who was seen "peeping" in the windows of a house. Fifteen minutes later the officer arrived and subsequently arrested the accused without a warrant. British Columbia Court of Appeal Justice O'Halloran opined at p.220/221:

> "[The authorities] establish that if the offender is seen doing the act by one person, he may be apprehended by another who did not see him doing

[6] Unless of course, while being detained, the police lay a s.810 Criminal Code information seeking a recognizance.
[7] see s.34(1) Criminal Code
[8] R. v. Biron (1976) 2 S.C.R. 56 (S.C.C.)
[9] See Cluett v. the Queen (1985) 21 C.C.C. (3d) 318 (S.C.C.)
[10] See R. v. Biron (1976) 2 S.C.R. 56 (S.C.C.)
[11] Ibid.

> the act, provided the arrest occurs in fresh pursuit, or in circumstances of a continuing nature with no break in the connection between the "seeing" and the arrest; it must constitute a continuance of the same transaction"

In *R. v. Pithpart* (1987) 34 C.C.C. (3d) 150 (B.C.Co.Crt), the accused was arrested by way of a police undercover team operation. A plain-clothes officer made the initial contact with the accused, who offered her services as a prostitute to the plain clothes officer. The plain-clothes officer gave a pre-arranged signal to two officers in uniform who then made the arrest and took the accused down to police headquarters where she was detained in custody overnight. In holding that the arresting officers found the prostitute committing the offence of soliciting, the Court found the commission of the offence and the arrest to have been part of a single transaction[12].

In *Everywoman's Health Centre Society (1988) Victoria Drive Medical Clinic Ltd. v. Brydges* [1989] B.C.J. No. C886265 (B.C.S.C.), the Court reviewed the phrase "found violating" as it appeared in the terms of a court order. The order authorized the police to arrest "any persons found violating" its provisions. At issue was whether the phrase "found violating" empowered the police to arrest persons who were violating the order immediately prior to police arrival, but were not in violation at the moment of arrival. In this case, persons would block the entrance door to the centre in contravention of the court order, but at the time police arrived would no longer be blocking the door. British Columbia Supreme Court Justice Cohen, in citing *Frey*, stated:

> In my opinion, the words: "any person found violating any provision of paragraph (a) or (e) must, by law, be given their practical, sensible meaning as including violating conduct which takes place just before the police arrive at the scene. Of course, the police must, as is their normal practice, make reasonable enquiries to find reasonable and probable grounds to conclude that any person has recently violated the Order. If the police so find, then [the court order] justifies and requires the police to make an arrest. [emphasis added]

"criminal offence" means any federal statute offence, including indictable, dual and summary conviction.

This provision is the only peace officer warrantless power of arrest (outside s. 494(1)(b) of the *Criminal Code*), which covers summary conviction offences. However, because there is no power of arrest for strictly summary conviction offences, unless they are found committing, the offender could still be charged with a summary offence. The officer must simply compel the person's court attendance through another method such as requesting a summons or the issuance of a warrant.

Believes on Reasonable Grounds is the Subject of a Warrant

Section. 495(1)(c) of the *Criminal Code* gives a peace officer the power to arrest anyone the peace officer has reasonable grounds to believe there is a warrant (of arrest or committal) in Part XXVIII of the *Criminal Code* in force in the jurisdiction in which the person is found. An arrest under this section is authorized if there are reasonable grounds for believing a warrant is in force[13].

> s. 495(1)(c) *Criminal Code*
> A peace officer may arrest without warrant…(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.

"reasonable grounds to believe" in the context of this provision means that the peace officer does not have to rely on the actual warrant being in hand as the authority for the arrest, but can rely on reliable information (such as CPIC information, or information received from another police officer or the court) that the warrant

[12] In the alternative, the Court held the arresting officer was the agent of the plain-clothes officer and therefore in law, the arrest was made by the plain-clothes officer.

[13] R. v. Dennis 2001 B.C.S.C. 615 at para 17.

exists. Although this arrest authority is warrantless, it is nonetheless predicated on a reasonably held belief that a warrant does exist. A warrant exists as soon as the judge makes it, even before the order is committed to writing[14].

"warrant" (arrest or committal) is a judicial order directed to peace officers to arrest a person and bring them before the court. The warrant will have a specific radius of coverage (i.e. it will be in force only within a specified territorial jurisdiction—e.g. British Columbia radius, or Canada-wide, depending on the charge). Arrest or committal warrants should not be confused with search or entry warrants, or warrants issued under other federal or provincial statutes.

"in force in the jurisdiction in which the person is found" means that the warrant must cover the territorial jurisdiction in which the person is arrested. This territorial or geographical area that an arrest warrant is executable will be dependent upon the provision that authorizes the issuance of the warrant. For example, a bench warrant issued for non-attendance at trial where an indictment has been preferred against an accused is executable anywhere in Canada (see s.597 *Criminal Code*). Other warrants only carry with it the territorial jurisdiction of the justice, judge, or court that issues the warrant (see s.513 *Criminal Code*).

However, the territorial radius of a warrant may be limited for public policy, practical, and administrative reasons by the Crown or police agency. This is known as labeling[15]. The Crown and police set returnable radii for such reasons as the cost of physically returning the subject of a warrant to the jurisdiction for trial. This decision is often based on the seriousness of the offence.
For practical purposes, police officers should respect the warrant radius stated in the CPIC entry. For example, if the suspect is found in Vancouver and the warrant has a British Columbia radius, then that person can be arrested; however, if the warrant has a "Manitoba only" radius, then that person should not be arrested on the warrant in Vancouver or anywhere else in British Columbia.

A police officer should always confirm with CPIC or the communications operator to determine the radius of the warrant before making the arrest. Furthermore, the warrant should be confirmed with the originating agency. In the event the subject of an arrest warrant is located outside the specified radius of the CPIC entry, a request can be made to the originating agency requesting an extension on the radius of the warrant. If the request is granted, follow up investigation can be made and the person subject to arrest at a later time.

Although warrants may be "Canada Wide" because the Criminal Code permits judges elsewhere to "validate" or back warrants from other jurisdictions[16], Crown Counsel retains the discretion to extend or reduce the radius of a warrant to meet the individual needs of a case.

Protection from liability

Provided a police officer acts in good faith, they will be protected from liability in the event that the warrant later turns out be defective:

> s.25(2) *Criminal Code*
> Where a person is required or authorized to execute a process…that person or any person who assists him is, if that person acts in good faith, justified in executing the process…notwithstanding that the process…is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

Furthermore, if an officer makes an arrest pursuant to a warrant, but in fact arrests the wrong person, they will be protected from criminal liability if they were acting on reasonable grounds and in good faith that they had the right person:

> s.28(1) *Criminal Code*
> Where a person who is authorized to execute a warrant to arrest believes, in good faith and on

[14] See R. v. Gunn (1997) 113 C.C.C. (3d) 174 (Alta.C.A.) application for leave to appeal dismissed [1997] S.C.C.A. No. 175 (S.C.C.).
[15] R. v Cardinal (1985) 21 C.C.C. (3d) 259 (Alta. C.A)
[16] R. Cardinal (1985) 21 C.C.C. (3d) 254 (Alta. C.A.)

reasonable grounds, that the person whom he arrests is the person named in the warrant, he is protected from criminal responsibility in respect thereof to the same extent as if that person were the person named in the warrant.

Duty to possess warrant

Section 29(1) of the *Criminal Code* requires the police officer to have the warrant in possession, if feasible, and to produce the warrant if requested by the person.

s. 29(1) *Criminal Code*
It is the duty of every one who executes a process or warrant to have it with him, where it is feasible to do so, and to produce it when requested to do so.

However, in many cases it will not be feasible, since the warrants are held on file within the police agency responsible for the investigation that led to the issuance of the warrant. For example, a routine CPIC query of a driver of a motor vehicle may indicate there is an outstanding warrant for their arrest. The law does not require that the officer first obtain a copy of the warrant prior to executing it on the roadside. However, if the officer is executing a specific warrant and has the warrant in their possession at the time of service, the officer must produce the warrant when requested.

LIMITATIONS ON ARREST

Once a police officer has determined that the power of arrest under s.495(1) of the *Criminal Code* for an offence exists, a duty is imposed on the officer under s. 495(2) not to arrest in prescribed circumstances. Therefore, even if the officer has the power of arrest under s. 495(1) of the *Code*, the officer will not necessarily exercise that power. These limits recognize the need to prevent unnecessary pre-trial detention and the availability of less expensive and less onerous ways to compel an individual's appearance in court. This provision also establishes criteria, commonly referred to as "public interest" and "court appearance", which must be considered in deciding whether to carry out the arrest.

s.495(2) *Criminal Code*
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.

Shall Not Arrest

"Shall not arrest" means that the peace officer must consider the limitations on arrest found in s.495(2) of the *Criminal Code* prior to arresting a person, and then refrain from arresting the person if an arrest is unnecessary having regard to the established criteria (i.e. public interest and court appearance). However, in many situations, the police officer will have to take physical custody of a person immediately upon arriving at a scene where the offender is still present. Justification may include a necessity to gain control of an arrestee and establish a safe environment in which to conduct the investigation in determining whether public interest or court appearance is satisfied. This will particularly be the case where the offence involved violence or where there is a perceived risk of the person fleeing the scene.

In the event that the police officer makes an arrest at the scene for an offence to which s.495(2) applies, the officer must continually consider releasing the person if public interest is subsequently satisfied. Under subsections 497(1)

and (1.1) of the *Criminal Code* a police officer shall consider release when they arrest a person without a warrant for an indictable offence mentioned in s.553 (offences that are within the exclusive jurisdiction of the provincial court), a dual offence, or a summary conviction offence. In other words, if a police officer arrests a person under s.495(1) of the *Code*, s.497 requires the officer to consider releasing the person if the public interest and court appearance criteria are satisfied; if these criteria are met, the officer shall not continue the arrest and release the person.

s.497 *Criminal Code*
(1) Subject to subsection (1.1), if a peace officer arrests a person without warrant for an offence described in paragraph 496(a), (b) or (c), the peace officer shall, as soon as practicable,
(a) release the person from custody with the intention of compelling their appearance by way of summons; or
(b) issue an appearance notice to the person and then release them.
(1.1) A peace officer shall not release a person under subsection (1) if the peace officer believes, on reasonable grounds,
(a) that it is necessary in the public interest that the person be detained in custody or that the matter of their release from custody be dealt with under another provision of this Part, 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,
(iii) prevent the continuation or repetition of the offence or the commission of another offence, or
(iv) ensure the safety and security of any victim of or witness to the offence; or
(b) that if the person is released from custody, the person will fail to attend court in order to be dealt with according to law.

The public interest provisions included in s.497 of the *Code* have been expanded upon by the addition of a fourth element; ensuring "the safety and security of any victim of or witness to the offence".

PUBLIC INTEREST

No narrow definition of "public interest" has been developed in law. In order to determine whether the "public interest" would be satisfied by arrest or release, the peace officer must consider all the circumstances of the offence including, but not limited to[17], those conditions referred to in s.495(2)(d) of the *Criminal Code*.

s.495(2)(d) *C.C.C.*
A peace officer shall not arrest…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

Need to establish identity

Police may arrest if it is necessary to establish identity[18]. The police officer must be satisfied that the suspect's identity has been established, so that if an arrest is not perfected the person's attendance in court can be secured by a secondary method such as an appearance notice or summons. This is necessary to ensure that:

- the charge will be laid against the correct individual; and
- if the person fails to appear for court, a warrant for arrest may be issued.

Moreover, "establishing identity includes the steps necessary to identify in the future the person answering the charge in the court-room as the person" detained or arrested by the police at the time of the offence[19]. This may require the police officer verifying identity through photographic identification (ie. drivers license, passport, etc.), querying the individual on CPIC to

[17] see R. v. Sieben (1989) 51 *C.C.C.* (3d) 343 (Alta.C.A.), Collins v. Brantford Police Services Board (2001) Docket: C34623 Ont. C.A.
[18] See R. v. Lavin (1992) 76 *C.C.C.* (3d) 279 per Tyndale J.A. at p.282.
[19] R. v. Dilling (1993) 84 *C.C.C.* (3d) 325 (B.C.C.A.) leave to appeal to S.C.C. refused 88 *C.C.C.* (3d) vi (S.C.C.)

obtain previous criminal record[20] and description, further investigation to determine other details of the individual such as physical characteristics (ie. height, weight, tattoos, marks, scars, etc.), place of residence, or other relevant matters for purposes of identification. It may be necessary in some cases to establish identity by fingerprinting the individual[21].

Need to secure or preserve evidence of or in relation to the offence

This may require a search of the person or surroundings to discover, secure, or preserve evidence related to the arrest. There may be a need to arrest the person for example, to search incidental to the arrest[22]. Another example where arrest might be required would be to prevent the arrested person from interfering with the execution of a search warrant or a contemporaneous investigation that may require the discovery or preservation of evidence at a secondary location. An arrest may prevent the person from warning other persons yet to be arrested who may interfere with the investigation.

Need to prevent the continuation or repetition of the offence or the commission of other offences

An arrest may be required, for example, when the police officer finds a person committing an assault. Following intervention, if the police officer believes that the assault will be repeated if an arrest is not effected, an arrest is justified. In *R. v. Venzi* [1997] B.C.J. No 3019 (B.C.S.C.), Justice Lamperson reviewed the application of s.495(2) of the *Code* with respect to an arrest for an assault which occurred in a domestic context. The Court found that "section 495(2) requires among other things that for a police officer not to arrest pursuant to s.495(1), [they] must have reasonable grounds to believe that an offence will not reoccur". The Court further went on to state:

> Section 495(2) mandates that a police officer, who has [reasonable] grounds under s.495(1), must arrest unless he has [reasonable] grounds to believe that an arrest is not necessary for the protection of the public. In other words, if he does not have [reasonable] grounds to conclude that the respondent will not commit another offence then he must arrest.

In *R. v. McIntosh* (1984) 29 M.V.R. 50 (B.C.C.A.), the British Columbia Court of Appeal examined the arrest of an impaired driver to determine whether it was made in compliance with the *Criminal Code*. Justice Esson, for the unanimous court, held:

> The burden upon the Crown was not to establish that the accused would have driven his car. The officer…rightly viewed the question as whether there was a risk of that occurring or, to look at it the other way, whether the officer could be certain that it would not occur. It does not matter that the risk, in statistical terms may have been small.

In *R. v. Ware* (1987) 49 M.V.R. 97 (B.C.Co.Crt.), another impaired driving case, Justice Lamperson reviewed applicable cases on public interest and stated:

> Although the following list is not exhaustive, those cases suggest that a police officer considering an arrest under s. 450(2) [now 495(2)] should keep the following factors in mind:
> (1) The criteria set out in s. 450(2) are not all-embracing;
> (2) The public interest, having regard to all the circumstances, must be the main consideration;
> (3) In impaired driving cases a possible repetition of the offence must be the paramount concern because of the tragic results which may follow;
> (4) The officer must consider the mental and physical condition of the suspect;
> (5) In deciding whether to arrest, the officer may draw on his own experience, the experience of fellow officers and the collective experience of the force;
> (6) He is entitled to arrest if he cannot satisfy himself that the suspect will not repeat the offence.

[20] A person should have an intimate knowledge of their criminal history and therefore questioning them in regards to their record may assist in confirming their identity.
[21] See R. v. Higgins & Beare (1988) 45 C.C.C. (3d) 57 (S.C.C.).
[22] See R. v. Lavin (1992) 76 C.C.C. (3d) 279 (Que. C.A.) per Tyndale J.A. at p.282.

In *Ware,* the Court also recognized that some allowance must be given to an "on the street" application of public interest (as opposed to an application made in the comfort of a controlled environment like a police office):

> A court must take into account that the arrests took place at the scene. In those circumstances it is unrealistic to expect a police officer to apply the criteria set out in s.450(2) [now s.495(2)] with the same precision as he would in the relative calm of the police station.

However, if the arrest is effected in the absence public interest being satisfied, once public interest is satisfied there is a requirement under s.497 of the *Criminal Code* to release the person and compel court attendance through another method.

The need to ensure the safety and security of the victim or witness to the offence.

This element is absent from the considerations of public interest in s. 496 of the *Criminal Code* (release without arrest), however appear in ss. 497 and 498 of the *Criminal Code* (release following arrest). It may be necessary to arrest a person to secure a victim's or witness' welfare or because of an apprehended threat to the safety and well being of a victim or witness to the offence. Conditional release with restrictions such as no contact orders or no attendance orders may be warranted to protect the victim or witness.

Summary of "public interest" includes the following:

- the need to establish the identity of the person
- the need to secure or preserve evidence of or in relation to the offence
- the need to prevent the
  - continuation of the offence
  - repetition of the offence
  - the commission of another offence
- the need to ensure the safety and security of any victim or witness to the offence

Once an accused has been arrested, it is not a requirement of the *Code* for a police officer to "enumerate the reasons for the exercise of [their] discretion in holding an individual", although it may be preferable to advise the arrestee[23].

Policy Based Arrests

A decision to arrest and detain should be based on reasons relating specifically to the individual[24]. An arrest based solely on policy (ie. the British Columbia Attorney General's Policy on violence against women) rather than for reasons pertaining to the individual is unlawful and arbitrary (contrary to s.9 of the *Charter*)[25]. It would be equally wrong for an individual police officer or police force to have a policy to arrest regardless of the circumstances[26]. However, the question on whether a detention will be arbitrary will not only be whether the arrest was based on policy, but also whether in fact s.495(2) of the *Criminal Code* was breached by the arrest not being reasonable in the public interest[27].

For example, in *R. v. Hardt* [1999] B.C.J. 1288 (B.C.S.C.), the police arrested the accused for assault arising from a domestic circumstance. The accused argued that the "real reason" the arrest was made was to achieve policy objectives (the Attorney General's policy on spousal abuse) and the police were therefore not acting in the lawful execution of their duty. Justice Smith recognized that reference to policy considerations do not in all cases render an arrest arbitrary and may go to the officer's state of mind when assessing the validity of the arrest under s.495 of the *Code*. The Court held:

> The mere reference to "policy" does not mean that the arrest was motivated by general policy considerations rather than by specific reasonable and probable grounds causing the officer to believe the appellant had committed an indictable offence as required under s. 495(1). Just as the police in

[23] R. v. Ronnie [1999] B.C.J. No. 813 (B.C.Prov.Ct.)
[24] R. v. Pithart (1987) 34 C.C.C. (3d) 150 (B.C.Co. Crt.)
[25] See R. v. Venzi [1997] B.C.J. No. 3019 (B.C.S.C.), R. v. Faulkner (1988) 9 M.V.R. (2d) 137 (B.C.C.A.)
[26] See R. v. Ware (1987) 49 M.V.R. 97 (B.C.Co.Crt.)
[27] R. v. Cayer (1988) 6 M.V.R. (2d) 1 (Ont.C.A.)

the execution of their duty must bear in mind guidelines, for example, for the manner in which they inform accused persons of their rights under the Charter, they must also bear in mind guidelines or policies for the manner in which they conduct assessments under s. 495(1).

COURT APPEARANCE

In addition to "public interest", the peace officer must also consider whether, if released, the accused will appear in court.

> s.495(2)(e) *Criminal Code*
> A peace officer shall not arrest…in any case where (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.

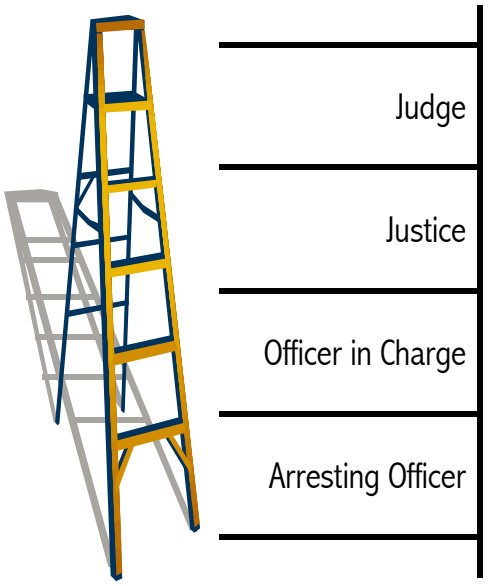
This provision places an affirmative duty on a police officer not to arrest unless the officer possesses the requisite grounds of belief. The information available to the police officer will determine whether there are reasonable grounds to believe that the person will not appear for court. Criteria to be considered may include:

- the offender states they will not attend court;
- previous convictions for failing to appear in court;
- outstanding warrants of arrest in other jurisdictions indicating the person's propensity to avoid the court jurisdiction; or
- a person is so intoxicated that they may not recall the police officer speaking to them or understand the conditions of court attendance.

As with public interest, if the arresting officer is justified in arresting to ensure court appearance and the situation changes (e.g. the intoxicated accused sobers and can now understand the charge and release), there is a continuing requirement for the arresting officer (and the officer in charge) to re-consider releasing the person and compelling their court attendance by another method.

The Release "Ladder"

In a sense, the continuing obligation to assess public interest and court appearance takes a "ladder" approach and each rung, or stage, involves its own assessment of the release criteria.



PATROLS ON THE WILD SIDE: WHERE FACTS ARE OFTEN FUNNIER THAN FICTION

Collected By Constable Ian Barraclough…

Case of Mistaken Identity

The BBC reported at the beginning of May that a police officer in Israel got more than he bargained for during a routine house call. In response to a noise complaint made by a neighbour, a young male police constable was dispatched to investigate. Upon arriving at the scene, he found himself amongst a crowd of female revellers celebrating a hen party. Unbeknown to the constable, the women had ordered a stripper to perform at their party and were expecting him to arrive when the constable knocked on the door. Furthermore, they had specifically requested that the entertainment company send them someone dressed as a police officer!

Suddenly finding himself the main attraction, the young constable had to start fending off the rowdy women who, honestly mistook the constable as a stripper, started to undress and caress him. One of the partygoers "took off my shirt and untied my shoelaces," the officer was quoted as saying by the Yedioth Ahronoth daily, "She started stroking me and called on her friends to join in." As a last resort, the constable pulled out his badge, but the party goers simply thought it was all part of the act. The police officer was reportedly only able to extricate himself when his partner called for back-up. The revellers were fined. [bbc.co.uk/news 05-05-03].

Finding the Safest Place to Hide

Thirty two year old Troy C. Stephani was suspected of impaired driving while meandering along a road in his pick-up truck in Medford, New York. An officer from Suffolk County Park Police pulled the vehicle over due to his erratic driving, but when the officer walked up to the driver's side of his truck, Stephani took off. A police chase ensued with Highway Patrol vehicles and cruisers dispatched from the County Police Fifth Precinct. Thinking that a "big building" complex would offer him safe refuge from the pursuing officers, Stephani pulled straight into the headquarters of the Suffolk County Police Department.

"I guess he couldn't have made a worse turn," Sgt. Victor Webster, of the Suffolk County Park Police, said. "But it was good for us."

Stephani not only tried to take refuge in the complex of the police headquarters, but he pulled into a driveway leading directly up to the department's K-9 section, where he was cornered. Asked why he didn't yield to the pursuing officers earlier, Stephani allegedly claimed he needed time to finish his crack cocaine. [Salon.com-AP, 04-28-03].

Search Appeal Makes you Sick

You have the right to remain silent, but what if you vomit evidence before police read you your rights? Connecticut's Supreme Court heard arguments in April on a rather fine point in "Miranda warning" law: whether the police can use a drug suspect's vomit against him (or at least use the eight bags of heroin that came up with the vomit). Arresting officers apparently asked suspect Vincent Betances if he had just swallowed heroin, and Betances (without a warning) said that he had, leading officers to summon medical help. Betance now says the officers' question was unconstitutional "interrogation," even though without immediate treatment, he could have died. The state Supreme Court is expected to issue a ruling this summer. [Hartford Courant, 04-23-03, Associated Press, 04-25-03].

From Police Blotters

- (Washington Post, April 11) "Mount Olivet Road NE, 1200 block, March 30. An animal control officer responding to a call about a snake in a bathroom reported that the snake was actually a hair band."
- Vancouver, Washington) Columbian, Jan. 7) "A Vancouver police officer was sent to a home in the 3100 block of S Street ... when a woman called 911 to say a group of 30 cannibals from Yacolt were trying to break into her house. (Officers were unable to locate any cannibals."
- (Grass Valley (Calif.) Union, March 30) "A Dorsey Drive convalescent facility reported that one Alzheimer's patient struck another Alzheimer's patient, but neither of them remembered the incident or wanted medical attention."

[Chuck Shepherd's News of the Weird, Week of May 18, 2003, newsoftheweird.com].

ODOUR OF ALCOHOL ON BREATH SUFFICIENT TO JUSTIFY ROADSIDE DEMAND

R. v. Butchko, 2003 SKPC 76

The police stopped a vehicle with three occupants after it was observed leave a liquor establishment, make a u-turn, accelerate, and fishtail. An odour of alcohol was detected coming from the vehicle. The driver was asked to step out of the vehicle and an officer detected a strong smell of alcohol on his breath. When asked if he had anything to drink the driver replied that he had not. The driver was read the roadside screening demand, but refused to provide a sample. After repeated unsuccessful attempts at gaining compliance to the demand, the officer charged the defiant and uncooperative accused with refusal.

At his trial in Saskatchewan Provincial Court on the charge of refusing to provide an approved screening device sample, the accused submitted that the smell of alcohol on his breath, by itself, was insufficient in providing a reasonable suspicion that he had alcohol in his body and that the officer required additional objective indicia of consumption. The accused filed expert evidence that the smell of alcohol detected on a person's breath may not be indicative of alcohol in the body as the ethanol may have been eliminated, while the chemical causing the odour has not.

Section 254(2) of the *Criminal Code* allows a police officer to make a roadside demand if they reasonably suspect the driver has alcohol in their body. The legal threshold, reasonable suspicion, is low and does not require a belief that a crime has been committed. In concluding that the odour was sufficient to provide the necessary level of suspicion, Justice Whelan stated:

> I accept that the Officer genuinely possessed the suspicion and believed it to be reasonable. An objective scrutiny requires that I find the Officer's suspicion was reasonable. I don't believe that it requires that the Officer's evidence be scrutinized in light of all the evidence before the Court. It's sufficient to ask; whether a reasonable person, standing in the officer's shoes, with the officer's knowledge, would have had a reasonable suspicion.

The accused was convicted for the refusal.

Complete case available at www.canlii.org

ARRANGING SERVICES AMOUNTS TO PROSTITUTION

R. v. Petts, 2003 NBQB 102

The accused stopped an undercover police officer on a public street and offered to arrange for a woman to perform a sexual act on the officer in exchange for $40. The accused provided the officer with an address and telephone number. Later a woman came out of the residence at the address provided and spoke to the officer. The accused was charged and convicted in New Brunswick Provincial Court of communicating with another person to obtain the sexual services of a prostitute. However, he appealed to the New Brunswick Court of Queen's Bench arguing he was communicating not to "obtain" sexual services, but to "provide" them. In dismissing the appeal, Queen's Bench Justice McLellan concluded the accused was "acting as an intermediary or broker between a prostitute and a potential customer". The Court further stated:

> Here the accused stopped the undercover officer in a public place for the purpose of communicating with that officer that the accused could obtain the sexual services of a prostitute for that officer. I think the offence is established if an accused in such circumstances attempts to arrange the services of a prostitute for himself or for another person.

Complete case available at www.canlii.org

ENTRY TO PROTECT PROPERTY LOGICAL, LAUDABLE & LAWFUL

R. v. Sanderson,
(2003) Docket:C37434 (OntCA)

The police met with a distraught young woman after receiving a 911 call from her in the middle of the night. She reported that her boyfriend (the accused), at whose house she had been living, assaulted her and made threats concerning her dog and personal property. She was adamant about returning to the accused's home and retrieving her personal belongings (clothes, cosmetics, furniture). Four police officers (including two trainees) went with her to the accused's house. She let herself and the police in with a key. The accused was found inside standing in the bedroom doorway and was told by officers that they were there to keep the peace while the woman gathered her belongings and would then leave.

He was also told they were there to investigate the allegations she made and that he could come with them voluntarily for questioning to the police station or otherwise they would seek an arrest warrant for the assault. The accused told the police to get a warrant, swore at them, and ordered them from the home. The woman wanted to retrieve some items from the bedroom, but the accused refused to move out of the doorway and continued to block entry despite several requests by the police to move. He was arrested for obstruction after being warned. He resisted arrest and a struggle ensued. Pepper spray was deployed and the accused was subsequently subdued.

At trial the accused was convicted of the earlier offences respecting the altercation between himself and his girlfriend, but was acquitted of the obstruct and resist charges. In the trial judge's view, once the police decided they would not arrest the accused at that time for the earlier altercation, the police "ought to have left the residence…and pursued alternate remedies to protect the property of the alleged victim". A Crown appeal to the Ontario Superior Court of Justice was dismissed. The appeal court judge found that the police "should have exercised better judgment in this matter, there being no ongoing or continuing exigent circumstances following their unlawful entry." The Crown appealed again, this time to the Ontario Court of Appeal.

The Entry

The Crown argued that the police were lawfully entitled to enter the accused's residence because:

1) the girlfriend, as occupier, had invited them in to assist her, and
2) they were discharging their common law duty to preserve the peace and protect property.

The accused submitted that the girlfriend was only a guest, not an occupant, and therefore did not have the authority to give consent to the entry. Although the Ontario Court of Appeal did not interfere with the trial judge's finding that the girlfriend could not give the police permission to enter, both the common law and statutory duties imposed on the police to preserve the peace and protect property were engaged. In evaluating the common law powers and duties of the police, a two-stage enquiry (derived from the English case *R. v. Waterfield*, [1963] 3 All E.R. 659 (C.C.A.)) was used:

1) Did the police conduct fall within the general scope of any duty imposed by statute or recognized at common law? and

2) Did the police conduct involve an unjustifiable use of powers associated with the general scope of that duty?

In holding that the police entry was justified using the Waterfield test, Justice MacPherson, for the unanimous court, wrote:

> The powers and duties of a peace officer emanate from common law and statute. The general duty of a peace officer is to preserve peace as it relates to the protection of life and property.

And further:

> The officer's were faced with a distraught woman in the middle of the night. She, and an independent witness, reported that she had been assaulted by the [accused]. She had left the residence in only her pyjamas and without footwear-on March 29. The altercation continued, and another assault took place, when the complainant returned to the house with [a friend] to retrieve her dog and personal belongings. After she left a second time, the [accused] followed her to [the friend's] apartment where, in a heated exchange, he threatened to burn her personal belongings.
>
> Hearing all of this when they arrived, the police were fully justified, in my view, in deciding to go to the [accused's] house and, accompanied by the complainant who told them that she lived there and had a key, to enter it. They were investigating several potential criminal offences and they had reason to believe that the [accused] would destroy the complainant's personal property. Moreover, they wanted to assist the complainant with retrieving her clothing and personal belongings, and getting away from the [accused], so that she could proceed to her parents' home…

Justice MacPherson concluded the officer's decision to go with the girlfriend to the accused's residence was logical and laudable—"precisely what a distraught citizen would want and need from a police officer."

Police conduct inside residence

Both lower court judgments concluded that the continued police presence once asked to leave, as well as the order to move from the doorway, was unlawful. Since the accused did not appear to be imminently endangering the property—he was not in the process of destroying it—other avenues to protect the property should have been pursued. The Ontario Court of Appeal disagreed. Justice MacPherson stated:

> The steps the police took inside the dwelling were directed to [prevent her belongings from being burned and to assist her in removing them from the dwelling]. If the [accused] had moved out of the bedroom doorway, the complainant, under the watchful eye of the police, could have safely removed her belongings (one purpose fulfilled) which in turn would have given the respondent no opportunity to burn them (the second purpose fulfilled). The police were fulfilling their common law and statutory duties of protecting property and assisting a victim of crime. The first stage of the Waterfield analysis has been met.

In assessing the second stage of Waterfield, whether the conduct of the police involved a unjustifiable use of police powers associated with the duty of preserving the peace and protecting property, the Court held:

> …The police had been called to assist a distraught young woman in the middle of the night who, after being assaulted twice, had been forced to flee her boyfriend's residence, without any shoes, and wearing only her pyjamas.
>
> There have been significant and commendable changes in recent years in the response of Canadian police to domestic violence situations. There is now a much greater recognition by the police of both the extent and the seriousness of the problem, and the consequences for victims in the community, when the police fail to respond. Police officers are often the first persons called to respond in situations of domestic violence. In my view, it is very much in the public interest that the police, in the discharge of their public duties, be willing and able to assist victims of domestic violence with leaving their relationships and their residences safely and with their belongings. That is precisely what the police did in the present case.
>
> The actions of the police in the [accused's] residence were geared to a justifiable use of their powers. Constable Paul explained to the [accused] that they would leave as soon as the complainant had retrieved her belongings. The complainant wished to enter the bedroom, which she used when she stayed at the [accused's] residence, in order to get her clothes. When the [accused] refused to allow the complainant to enter the bedroom, the police were justified in ordering the [accused] to

> move, and in arresting him for obstruction when he refused to comply.

The Court also rejected the accused's submission that the police should have followed a different course of action:

> I disagree with these suggestions about proper police behaviour in the context of a volatile domestic dispute. The suggestion that the police might have advised the complainant to do nothing until the morning ignores the facts that she had been assaulted to an extent that the police noticed a scratch mark under her eyes, that it was the middle of the night and she had only pyjamas, and that an angry boyfriend had just attacked her dog and threatened to burn all of her belongings. A suggestion by the police that neither they nor the complainant do anything until the morning would have been unhelpful and inappropriate.

The officer's actions were "logical, laudable and lawful." The appeal was allowed, the acquittals on the obstruction and resist charges were quashed, and verdicts of guilty were entered. The matter was remitted back to the trial judge to impose sentence.

Complete case available at www.ontariocourts.on.ca

JUDGE ORDERS RETURN OF SEIZED DRUG PROPERTY

Carlisle v. HMTQ, 2003 BCSC 632

The police searched the applicant's home by consent and found 51 marihuana plants, four high-pressure lights, a wooden pipe, and a container with a green substance. He was charged with possession for the purpose of trafficking and cultivation of marihuana. These charges were subsequently stayed after the applicant received an exemption under the *Marihuana Medical Access Regulations* (*MMAR*). He brought an application before the Supreme Court of British Columbia seeking a restitution order for the marihuana plants, dried marihuana, and equipment seized, as well as $10,000 in direct and indirect monetary restitution. He submitted that because the police seized his marihuana and equipment he was unable to grow his own and was therefore forced to buy it for as much as $200 a day from other sources.

Justice Loo of the British Columbia Supreme Court noted that since the charges had been stayed, no forfeiture order had been made. She ordered the items seized from him be returned. However, the application for the monetary relief was adjourned for 60 days until the federal government has addressed the constitutional issues surrounding the *MMAR*.

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

FINDING FUN IN FITNESS

Cst. Kelly Keith

Get your head in the game

Have you ever been running or cycling and you've talked yourself into feeling tired. In any sport (especially endurance) your mind can be your biggest asset or your worst enemy. How you think and what you think about can and will affect the way you feel during your exercise. What you think about can make the difference between winning or losing / enjoying or hating your training and have a big impact on your decision to stay with an exercise program. Become aware of what you are thinking about in your next event.

What should you be thinking about?????

Are you using Association Techniques (focusing on body sensations and monitoring any changes) or Dissociation Techniques (directing attention away from bodily sensations by a form of distraction)?

So which is best?

- Association may be linked to faster running times

- Dissociation can reduce the sense of effort and awareness of physical sensations such as pain and fatigue - usually moderate to high intensity
- Athletes of all levels appear to favour association in competition and dissociation in training
- Elite athletes tend to use both strategies during endurance training and races and are able to switch between the two as required.

You will need to decide which strategy is best for you in your personal situation, preferences, and goals. For example Dissociation may benefit people who want to improve their endurance by running or exercising for longer periods of time at moderate intensities.

Association may benefit an athlete who is trying to set an ideal pace for optimal performance. Association is also important in competition if you are able to monitor bodily responses to enable you to ride the thin line between pushing for maximum performance and overdoing it. In Association you enter a concentrated state where you can react to changes within your body. I believe it is best to combine Associative and Dissociate thinking for longer runs, bike rides, etc.

I enjoy listening to music while exercising. The music I listen to bring positive emotions to me. However, last week I was riding up Mount Seymour and I felt sluggish so I turned to Dissociation techniques and starting singing (I had walkman on), but don't worry, I had my helmet and sunglasses on so no one knew me. Anyways, I couldn't beat the feeling so I went into Associative thinking and then realized that I was in 4th gear, which is why it was so hard! The moral of the story - Don't be too quick to go into Dissociation thinking!!!

Techniques for Dissociation:

- Music - this can generate positive thoughts, improve your mood state and distract you from the physical demands of your sport;
- Counting Game - Count the number of blue cars you see, or the number of dogs, post boxes etc....be inventive...;
- Alphabet Game - Work through A to Z for a chosen category - (names, countries etc);
- Active Fantasy - Imagine yourself as a lottery winner and decide how to spend your winnings

Avoid thoughts relating to work or jobs you have to do and anything problematic as this can increase tension. Try to be creative and have fun with Dissociation. It can help you relax and enjoy your sport even more.

Techniques for Association:

- Focus on your breathing—controlled, relatively deep rhythmic breathing is the key to relaxation. When you breathe out, try to imagine the tension leaving your body;
- Try to remain relaxed while running, cycling, swimming etc., but be aware of tension and fatigue in your muscles. It's often a good idea to start from the head and work down, giving each area or group of muscles your attention. If you notice tension, try to focus on a cue word, such as "relax" or "easy" and try to let tension flow out of the muscles;
- Keep your pace in line with the information you gain from monitoring your body. You might, for example, increase the pace if you feel very positive.

Repeat the monitoring constantly, or alternatively, take some time out for Dissociation. You might also reinforce your mood by telling yourself how well you are doing and that you need to keep working hard and remain focused.

Don't leave your psychological preparation to chance. Remember that you control your thoughts, not the other way around. The way you think is strongly linked to the way you perform. So if you want to perform better, gain greater control and enjoy your sport more, start planning today!

(reference - Peak Performance News Letter)

Summers Here - Stay Hydrated !

Staying hydrated is critical for optimal work-outs. The benefits of staying hydrated are endless. I will not bore you with them - however, whether you exercise or not staying hydrated is imperative to GOOD HEALTH.

- Drink 2 glasses of water first thing in the morning
- Drink during exercise
- Attempt to drink 10 glasses of water every day
- If you drink caffeinated/alcoholic drinks - drink one glass of water for every caffeinated/alcoholic drink, and these do not count for your regular 10 glasses
- If you're thirsty - you are partially dehydrated - don't allow yourself to get this way.

Running Uphill/Downhill

Running uphill and downhill are different in how they affect and condition the body. They both offer some great training benefits, not to mention it is good to change up the intensity of your runs, your route, and add in hills.

Downhill running will strengthen the muscles, improve your running economy and help develop speed, however the pounding your knee's and body take is also increased. To avoid injury on running downhill, try to choose gradual slopes, and/or grass, and use short, quick strides to minimize landing shock and prevent muscle soreness.

Uphill running is a great way to increase your cardio. This can be a good way to get a very intense work-out in as little time as possible. If you want to maximize your training and it's time to do a hill run, try this; running up 10 % of the hill - back down to the bottom, run up 20 % of the hill and back down - I'm sure you get the picture - this is intense and not for the beginner !

What is the best way to get past a fitness plateau?

Change your work-out. Variety is, in my opinion, the number "1" way to blast past a training plateau and keep you interested. This applies to all fitness, not just weightlifting. If you usually run on the street - take a trail run once a week. If you're usually a long distance cyclist, try putting wind sprints into your routine, or if you're used to working certain body parts together, change them all up. Take a look around and change work out plans with someone. Change everything up for six weeks and then go back to your regular routine for bit and see how you will improve. You'll not only break your plateaus but you'll have increased interest !!!!!

Cst. Kelly Keith is a 15-year police veteran. He served with the Winnipeg Police Service for 12 years before moving to Victoria where he has been since.

ROADSIDE SCREENING DEVICE DELAY TRIGGERS RIGHT TO COUNSEL

R. v. Ritchie, 2003 SKQB 246

At 2:30 am the police stopped the accused for turning right onto a highway from the wrong driving lane and for slowing down at an intersection even though there was a green light. At 2:35 am the accused was read the

approved screening device demand. However, the police officer did not have a device with him and had to wait 10 minutes for one to be brought to the scene. The accused refused to provide a sample and he was charged with refusal. He was convicted at trial by the Saskatchewan Provincial Court but appealed to the Saskatchewan Court of Queen's bench arguing that the demand was not proper and that he was denied his right to counsel under s.10(b) of the *Charter* when the police failed to inform him of his right to a lawyer before the roadside screening device arrived.

Court of Queen's Bench Justice MacDonald allowed the appeal and overturned the conviction. In the Court's view the accused was detained when the officer assumed control over his movement by a direction or demand, which may have significant legal consequences and which prevented or impeded access to counsel. In this case, there was a delay between the making of the demand and the arrival of the device. The delay did not arise from exigencies, but from the unavailability of the roadside device.

Section 254(2) of the *Criminal Code* requires that the sample be taken forthwith. Thus the delay in administering the test triggered the duty to inform the accused of his right to counsel. Justice MacDonald stated:

> While it is generally necessary, in order to ensure an accurate gauge of intoxication, to conduct a screening test as soon as possible after stopping the driver, there was in this situation, no urgency in the sense that the officers were able to inform the [accused] of his right to counsel when it became apparent that there would be a delay in administering the test. The officers had ample opportunity in the intervening minutes between the detention and the time that the screening device arrived to either inform the [accused] of his right to counsel, without any hardship being imposed upon them in doing so or to take the [accused] to the police station which was only two blocks away and administer the Borkenstein breathalyzer to him.

Complete case available at www.canlii.org

CLASS 91 GRADUATES

The Police Academy is pleased to announce the successful graduation of recruit Class 91 as qualified municipal constables on June 6, 2003.

DELTA
Cst. Robert Anzulovich
Cst. Shaun Begg
Cst. Ryan Jeffrey

NEW WESTMINSTER
Cst. Wendy Bowyer
Cst. Nicholas Ferguson

SAANICH
Cst. William Dodds
Cst. Leanne Montgomery
Cst. Martin Steen

VANCOUVER
Cst. Rodney Buysse
Cst. Peter Froh
Cst. Burinder Gill
Cst. Lene Jensen
Cst. Jason Lawrence
Cst. David Marsh
Cst. Barbara Martens
Cst. Colin McLachlen
Cst. Ryan Perry
Cst. Robert Phoenix
Cst. Michael Rowe
Cst. Baljinder Singh
Cst. Benjamin Stevens
Cst. Greig Vandenberg
Cst. Michael Wheeler
Cst. Christine Wohlleben
Cst Thomas Zwissler

Congratulations to Cst. Ryan Jeffrey (Delta), who was the recipient of the British Columbia Association of Chiefs of Police Shield of Merit for best all around recruit performance in basic training. Cst. Benjamin Stevens (Vancouver) received the Abbotsford Police Association Oliver Thomson Trophy for outstanding physical fitness. Cst. William Dodds (Saanich), Cst. Peter Froh (Vancouver), Cst. Baljinder Singh (Vancouver) and Cst. Thomas Zwissler (Vancouver) received the Vancouver Police Union Excellence in Academics award for best academic test results in all disciplines. Cst. William Dodds (Saanich) received the British Columbia Federation of Police Officers Valedictorian award for being selected by his peers to represent his class at the graduation ceremony. Cst. Martin Steen (Saanich) was the recipient of the Abbotsford Police Recruit Marksmanship award for highest qualification score during Block 3

training (50/50). Vancouver Police Chief Constable Jamie Graham was the keynote speaker at the ceremony.

LEADERSHIP: LOOKING BEYOND PERSONALITY

Sgt. Mike Novakowski

Faced with crisis, the man of character falls back upon himself
Charles Degaulle.

At its core, the trait theory of leadership focuses on individualized and enduring personal characteristics (physical, mental, emotional, and social attributes) that differentiate leaders from non-leaders. Leaders that exhibit these observable traits are "admired" (or idolized) by others[28]. Trait theory is "content" focused (what leader's are) and little attention is paid to the leaders actions (what leader's do)[29]. In contrast, an authentic and virtue based approach to leadership focuses on the ideal of "goodness"; conformity to moral and ethical principles. It is not just doing the right thing (virtuous action), but also being the right kind of person (virtuous character)[30]. Examples of virtues that embody leadership include honesty, courage[31], and humility[32]. Thus, is a virtue-based approach to leadership theory a mere variation of a trait theory, or does it involve considerations beyond personality?

If one looks at the premise of the trait theory, it is evident that a leader could possess the personality traits of a promising leader, yet little or no virtuous qualities. Stephen Covey found that up until World War I, success was founded in "character ethic", representative of such virtues as integrity, humility, fidelity, courage, and justice. After World War I, a paradigm shift to a "personality ethic" was observed where success became a function of image, attitude, behaviour, and skills "that lubricate the processes of human interaction"[33]. Traits such as age, height, "good looks", confidence, desire to lead, or even the "Big Five" model (surgency, dependability, agreeableness, adjustment, and intelligence)[34] have little, if anything to do with virtue.

Virtue based leadership, in contrast, provides a "moral compass" from which the common good and personal development are best served. Contemporary leaders who "engender virtue in self, others and society through example and virtuous conduct" will stimulate transformational leadership[35]. Although a person who practices virtue-based leadership may possess many of the physical, personality, or ability attributes that embody the trait theory, virtue-based leadership involves considerations beyond personality traits to include moral or ethical qualities which are not captured by trait theory. It's more about having and demonstrating character, than being one!!!

In Leadership, character matters
Gerald Bass

Note-able Quote

The Ten Commandments contain 297 words. The Bill of Rights is stated in 463 words. Lincoln's Gettysburg Address contains 266 words. A recent federal directive to regulate the price of cabbage contains 26,911 words.—The Atlanta Journal

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A LOUSY COP

Author unknown

Dear Mr./Mrs. Citizen

Well, I guess you have figured me out. I seem to fit neatly into the category you place me in. I'm stereotyped, characterized, standardized, classified, grouped, and always typical. I AM THE LOUSY COP.

Unfortunately, the reverse isn't true. I can never figure you out. From birth you teach your children that I am a person to beware of. Then, you are shocked when they identify me with my traditional enemy....the criminal.

You accuse me of coddling juveniles, until I catch your kid doing something wrong.

You take an hour lunch, and several coffee breaks each day, then, point me out as a loafer if you see me have just one cup.

You pride yourself on your polished manners, but think nothing of interrupting my meals at noon with your troubles.

You raise hell about the guy who cuts you off in traffic, but, let me catch you doing the same thing, and all of a sudden I am picking on you.

You know ALL the traffic laws, but never got one single ticket you deserved.

You shout "Abuse of Authority" if you see me driving fast to an emergency call, but raise nine kinds of hell if I take more than 30 seconds responding to yours.

You call it "Part of my job" if someone hits me, but yell "Police brutality" if I strike back.

You would never think of telling your dentist how to pull a badly decayed tooth, or your doctor how to take out your appendix, but you are ALWAYS willing to give me pointers on how to be a police officer.

You talk to me in a manner, and use language that would assure a bloody nose from anyone else, but you expect me to stand there and take your verbal abuse without batting an eye.

You cry, "Something has to be done about crime", but you can't be bothered to get involved.

You have no use for me what so ever, but of course, it's OK for me to change a tire for your wife, or deliver your baby in the back seat of my patrol car enroute to the hospital, or save your sons life with CPR and mouth to mouth resuscitation, or even forsake time with MY family working long hours overtime trying to find your lost daughter.

So, dear citizen, you stand there on your soapbox and rant and rave about the way I do my job, calling me every name in the book, but, never stop a minute to think that your property, your family, and maybe your life might someday depend on one thing.....ME.

Respectfully,

A Lousy Cop

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For comments on or contributions to this newsletter or to be added to our electronic distribution list contact
Sgt. Mike Novakowski at the JIBC Police Academy at (604) 528-5733 or e-mail mnovakowski@jibc.bc.ca