

A newsletter devoted to operational police officers in Canada.

## IN MEMORIAM



On December 1, 2011 37-year-old Bromont Police Officer Vincent Roy was killed after being struck by a vehicle while making a traffic stop at approximately 11:30 a.m..

He was completing the stop and returning the driver's license and registration papers to the driver when a truck struck his patrol car, and then struck him. He succumbed to his injuries at the scene.

Officer Roy had served with the Bromont Police for only a few months and had previously served with the Royal Canadian Mounted Police. He is survived by his wife and two children.



Source: Officer Down Memorial Page available at [www.odmp.org/canada](http://www.odmp.org/canada)

### “They Are Our Heroes. We Shall Not Forget Them.”

inscription on Canada's  
Police and Peace  
Officers' Memorial,  
Ottawa

#### NEW LAW

On December 8, 2011 Bill C-22, *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service*, came into

force. The legislation helps protect children from on-line sexual exploitation and applies to suppliers of Internet services to the public, including those who provide electronic mail services, Internet content hosting services, and social networking sites. Under the new legislation, those who provide Internet services to the public are now required to:

- report tips they receive regarding Web sites where child pornography may be publicly available to the Canadian Centre for Child Protection; and

- notify police and safeguard evidence for 21 days if they believe that a child pornography offence has been committed using an Internet service that they provide.

Failure to comply with the duties set out in this legislation constitutes an offence punishable by summary conviction with a graduated penalty scheme. For individuals (sole proprietorships), the maximum penalty is a fine of \$1,000 for a first offence, \$5,000 for a second offence, and for third and subsequent offences \$10,000 or six months imprisonment, or both. For corporations and other entities, maximum fines are \$10,000 for a first offence, \$50,000 for a second offence, and \$100,000 for third and subsequent offences.

## Highlights In This Issue

What's New For Police In The Library	3
Tip Plus Surveillance Provide Grounds For Arrest	4
Unlawful Arrest Leads To Unreasonable Search	7
Personal Discomfort Does Not Necessarily Amount To Excessive Force	8
2010 Police Reported Crime	9
Explanation of 2.5 Hour Search Delay After Arrest Not Required	14
Safety Or Evidence Concerns May Justify Waiving Knock & Announce	15
Safety Concerns Not Objectively Justified: Entry Unlawful	17
Police Must Wait A Reasonable Time Before Entry	20
Police Had Reasonable Suspicion Of Drug Activity: Entrapment Not Proven	22
Graduate Certificates: Intelligence Analysis / Tactical Criminal Analysis	24

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Unless otherwise noted all articles are authored by Mike Novakowski, MA, LL.M. The articles contained herein are provided for information purposes only and are not to be construed as legal or other professional advice. The opinions expressed herein are not necessarily the opinions of the Justice Institute of British Columbia. "In Service: 10-8" welcomes your comments or contributions to this newsletter. If you would like to be added to our electronic distribution list e-mail Mike Novakowski at [mnovakowski@jibc.ca](mailto:mnovakowski@jibc.ca).

## POLICE LEADERSHIP

### APRIL 6-8, 2013

"Staying Connected in a Changing World"



Mark your calendars. The British Columbia Association of Chiefs of Police, the Ministry of Public Safety and Solicitor General, and the Justice Institute of British Columbia Police Academy are hosting the Police Leadership 2013 Conference in Vancouver, British Columbia. This is Canada's largest police leadership conference and will provide an opportunity for delegates to discuss leadership topics presented by world renowned speakers.

[www.policeladershipconference.com](http://www.policeladershipconference.com)

## Graduate Certificates Intelligence Analysis or Tactical Criminal Analysis

see page 24



JUSTICE INSTITUTE  
of BRITISH COLUMBIA  
LIBRARY

## WHAT'S NEW FOR POLICE IN THE LIBRARY

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

### **Aggression in the sports world: a social psychological perspective.**

Gordon W. Russell.

Oxford; New York: Oxford University Press, 2008.

BF 575 A3 R867 2008

### **The art of successful relationships: the prince or the predator.**

Georina Ramirez.

New York, NY: Vantage Press, 2010.

HM 1106 R36 2010

### **Building the learning organization: achieving strategic advantage through a commitment to learning.**

Michael J. Marquardt.

Boston, MA: Nicholas Brealey Pub., 2011.

HD 58.82 M37 2011

### **The change book: change the way you think about change.**

Tricia Emerson, Mary Stewart.

Alexandria, VA: ASTD Press, c2011.

BF 637 C4 E443 2011

### **The Constant Contact guide to email marketing.**

Eric Groves.

Hoboken, NJ: Wiley, c2009.

HF 5415.1265 G76 2009

### **Develop your presentation skills.**

Theo Theobald.

London; Philadelphia: Kogan Page, c2011.

HF 5718.22 T455 2011

### **Exploring research.**

Neil J. Salkind.

Boston, MA: Pearson, [2011], c2012.

BF 76.5 S24 2011

### **Liquor and host liability law in Canada.**

Lorne Folick, Michael Libby, Paul Dawson.

Aurora, ON: Canada Law Book, c2010.

KE 3734 F65 2010

### **The manager as coach.** [videorecording]

Supernova Learning Solutions.

Mississauga, ON: RG Training Resources [distributor], 2011.

1 videodisc (14 min.): sd., col.; 4 3/4 in. (DVD) + 1 CD-ROM (leader's guide)

An emotionally intelligent approach to coaching builds effective working relationships, and helps create a culture that supports learning and continuous improvement. This program demonstrates a simple coaching framework and highlights the skills you need to coach effectively.

HF 5549.5 C53 M36 2011 (Restricted to in-house.) D1227

### **The negotiation of teaching presence in international online contexts.**

Tannis Morgan.

Vancouver, BC: Faculty of Graduate Studies, University of British Columbia, 2008.

LC 5803 C65 M676 2008

### **On the edge** [videorecording]: **managing high risk situations.**

Edge Training Systems, Inc.; directed by Dan Thompson.

Richmond, VA: Edge Training Systems; Santa Ana, CA, c2001.

1 videodisc (18 min.): sd., col.; 4 3/4 in (DVD) + CD-ROM (leader's guide).

Presents realistic scenarios on how to recognize warning signs in potentially volatile situations in the workplace and to act to prevent the violence before it occurs.

HF 5549.5 E43 O5 2001 (Restricted to in-house.) D1190

**The silent language of leaders: how body language can help-or hurt-how you lead.**

Carol Kinsey Goman.

San Francisco, CA: Jossey-Bass, c2011.

BF 637 N66 G664 2011

**Strategic planning for public and nonprofit organizations: a guide to strengthening and sustaining organizational achievement.**

John M. Bryson.

San Francisco, CA: Jossey-Bass, 2011.

HD 30.28 B79 2011

**Success stories from the frontline: intellectual disabilities and mental health: an anthology of first person stories as submitted by patients and their families.**

edited by Madeline Hombert; foreword and summaries by Robin Friedlander and Tina Donnelly.

Port Coquitlam, BC: Friedlander / Donnelly Publishers, 2006.

RC 451.4 M47 S88 2006

**Why are we bad at picking good leaders: a better way to evaluate leadership potential.**

Jeffrey Cohn, Jay Moran.

San Francisco, CA: Jossey-Bass, 2011.

HM 1261 C64 2011

**Work for all [videorecording]: stop racism in the workplace = La tête de l'emploi: pour en finir avec le racisme au travail.**

[Montréal, QC: National Film Board of Canada = Office national du film du Canada, c2006.

2 videodiscs (DVD) (ca. 71; 71 min.): sd., col.; 4 3/4 in.

French and English versions on separate DVDs in one container. Six short films about racism in the workplace and interviews with experts.

HF 5549.5 R23 W673 2006 D1205

**Yes! 50 scientifically proven ways to be persuasive.**

Noah J. Goldstein, Steve J. Martin, and Robert B. Cialdini.

New York, NY: Free Press, 2010.

HF 5718 G65 2010

**TIP PLUS SURVEILLANCE  
PROVIDE GROUNDS FOR  
ARREST**

**R. v. Whyte, 2011 SCC 49**



A CBSA officer assigned to the integrated weapons trafficking investigations team received a tip from a previously reliable informant.

The informer said that a black male, possibly named "Jay," would very soon be coming to Windsor from the Toronto area, maybe with someone else, for a transaction related to firearms and drugs. The address of an apartment building where the transaction was going to take place was also provided. The tip was passed on to a Windsor police officer assigned to the Provincial Weapons Enforcement Unit. In the officer's experience, Windsor was a place where people came to purchase inexpensive firearms because of its proximity to Detroit (where firearms were much

more available). In the officer's view, Windsor had become a nucleus for illegal trafficking in firearms. Since drugs, such as cocaine, were cheaper in the Toronto area, there was a trade in firearms and drugs between Toronto and Windsor. Police set up surveillance at the apartment and saw a black Grand Prix automobile arrive at about 5:00 a.m.. Two people, a black male wearing a track suit and a black female, entered the building. About half an hour later, these same two people left the building, returned to their car and headed back to the Toronto area. A check of the licence plate revealed that the car was rented. This was significant to the officer because, in his experience, people involved in illegal drug and firearm trafficking tended to use rental vehicles to transport contraband and avoid asset forfeiture.

Surveillance was broken but Peel police later found the car parked in the upper level of a parking lot outside a high rise apartment building at about 7:45 a.m.. A few minutes later they saw a black male

move the car. About 15 minutes later, the police found the car parked in the apartment building's underground parking lot. After another 15 minutes, two black males and one black female were seen coming out of the apartment building and go into the underground parking lot, walking directly to the trunk of the car. One of the men, wearing a tracksuit, was carrying a shoe box and supporting its bottom with both of his hands. The two men bent over the trunk area and seemed to be moving things around. The man in the tracksuit pulled off the cover of the spare tire. He removed the spare tire, replaced it with the shoe box, and then put the cover back on. The accused and the female then drove off. The vehicle was followed to downtown Toronto where it was stopped by a police tactical team. The accused and his female companion were arrested, and the vehicle was searched. Inside the shoe box were three handguns wrapped in a pillowcase. One of the handguns was loaded and another loaded handgun was located in the centre console of the vehicle. Police also found a backpack with some ammunition. The accused was charged with six firearm offences.

At trial in the Ontario Superior Court of Justice, the accused argued that the evidence should have been excluded under s. 24(2) of the *Charter*. The judge found that the arresting officer had the requisite subjective belief to make an arrest but lacked the objective grounds. Although the accused conceded that the informant was credible, the judge found the tip was not compelling. The tip was very vague and the opportunity for innocent coincidence was too high. Nor had the tip been independently corroborated. The fact that the vehicle was rented added nothing to the grounds for arrest nor did the handling of the shoe box indicate that its contents were contraband. While the activity of hiding the shoe box was suspicious, it did not meaningfully contribute to the existence of reasonable grounds. Considering the totality of circumstances, the trial judge held that the police only had a hunch or suspicion that the vehicle contained firearms. The police did not have reasonable grounds to arrest the occupants of the vehicle and the accused's arrest was unlawful and the search that followed was unreasonable. As a result of these ss. 8 and 9 *Charter*

breaches, the evidence was excluded under s. 24(2) and the accused was acquitted of all the charges.

The Crown appealed to the Ontario Court of Appeal. Justice Rosenberg, delivering the opinion of the Court, concluded that the trial judge failed to give any weight to the accused's concession of the police informer's credibility. Furthermore, the trial judge failed to consider the totality of the information available to the arresting officers in deciding that the police did not have the requisite objective grounds to arrest the occupants of the car.

### **An Informer's Tip and Reasonable Grounds**

The test for determining whether there are reasonable grounds based on an informer's tip requires a weighing of whether the information predicting the commission of a criminal offence was compelling, whether the source was credible, and whether the information was corroborated by police investigation. These factors do not form separate tests, but rather must be viewed on the "totality of the circumstances". Weaknesses in one factor may be compensated by strengths in the other two.

In this case, the accused conceded that the informant was credible. The informer was not just credible in the general sense because he had provided reliable information to the police in the past, but he had provided information in the past concerning firearms and drugs, as in this case. The informer's credibility was not just simply a factor to consider but it could compensate for weaknesses in the other two areas, especially whether the information predicting the commission of the offence was compelling.

As for the police surveillance, the trial judge had compartmentalized the information obtained from it and unreasonably discounted its value. Here, police surveillance confirmed elements of the tip including the attendance at the address provided by the reliable informer. Plus, driving a rental car all the way from Toronto for a 30 minute stay was highly suspicious and provided some confirmation that the people were in Windsor for a criminal purpose. "These facts, on their own, may not have been sufficient to provide the police with reasonable

grounds for arrest, and the police themselves recognized this fact," said Justice Rosenberg. "However, these facts were beginning to build a compelling picture of criminal activity as predicted by the informer." As to the significance that the car was rented, Justice Rosenberg added:

First, whether or not there were reasonable grounds did not stand or fall on the opinion of officers as to the weight to be attached to mundane items that could be found in any vehicle, rented or otherwise. The police in this case were relying on a tip from an informer who had proved reliable in the past ... Second, the inference to be drawn from the use of a rented car was simply one piece of information to be considered along with all the other information. It was entitled to some weight based on the officers' training and experience. On its own, it could not provide objective grounds for a search. However, it could not be wholly discounted, since there was no evidence to undermine the value of the officers' training and experience ... Finally, the fact of the use of a rented car had to be placed into context. The car had been rented in the Toronto area, which confirmed the aspect of the tip that the suspects were coming from Toronto. [para. 26]

Even though the police lost sight of the vehicle for a brief period and were unable to verify that the people who travelled to Windsor were the same ones who returned to the car with the shoe box, the surveillance was still of value. "In Windsor, a black male wearing a track suit and a black female were associated with the vehicle," said Justice Rosenberg. "In Toronto, a black male wearing a track suit and a black female were again associated with the vehicle, along with another black male. The police could not say for certain that they were the same people associated with the vehicle in Windsor, but it was an interesting coincidence."

Furthermore, the highly suspicious handling of the shoe box was, even on its own, powerful evidence that the vehicle was being used to carry contraband. Although it was not possible to say that the shoe box contained firearms as opposed to drugs or some other contraband by simply looking at how it was handled, it could nonetheless meaningfully

contribute to the existence of reasonable grounds (contrary to the trial judge's conclusion). The surveillance was not to stand on its own, but independently confirmed the informer's tip. In conclusion, Rosenberg held:

To summarize, by the time the police decided to stop the vehicle they had the following information to confirm the tip from the reliable informer:

- The vehicle arrived at the Windsor apartment building address as predicted in the tip;
- Windsor was known to be a location for firearm/drug transactions;
- The suspects were driving a rental vehicle;
- The suspects arrived in Windsor at 5:00 a.m. and remained for only 30 minutes;
- A black man wearing a track suit and a black woman were involved in both Windsor and Peel;
- The vehicle was parked in Peel for only 30 minutes before the occupants of the car were on the move again, this time with a shoebox secreted in the space where the spare tire had been.

Taken together, this information was sufficient to confirm the tip from the reliable informer and provide the police with the necessary objectively reasonable grounds to arrest the occupants of the vehicle and search the vehicle. ...

In this case, the sequence of events, from the 30 minute stay at the specified address in Windsor to the secreting of the shoe box after the 30 minute stay in Peel, sufficiently conformed to the anticipated pattern to remove the possibility of innocent coincidence. This sequence of events had to be measured against the knowledge and experience that the police officers brought to the investigation in informing the inferences to be drawn from the observations. That experience included knowledge of the trafficking in firearms in the Windsor area and the use of rental cars in illegal trafficking of drugs and firearms. [paras. 29-31]

The Ontario Court of Appeal found the police had reasonable grounds, subjective and objective, to

believe that the occupants of the vehicle were in possession of illegal firearms. The arrest of the occupants was lawful, the search that followed was incidental to arrest, and there were no *Charter* breaches. The evidence was admissible. The Crown's appeal was allowed, several weapons convictions were entered, and the matter was remitted back to the trial judge for sentencing. He was subsequently sentenced to 6 ½ years imprisonment less credit for 4 years of pre-trial custody. He was also given a lifetime firearms prohibition, ordered to provide his DNA, and the seized weapons were forfeited.

The accused then appealed to the Supreme Court of Canada. In a short oral judgment, Justice Deschamps delivered the unanimous opinion and concluded that the Ontario Court of Appeal did not err. The accused's appeal was dismissed.

Complete case available at [www.scc-csc.gc.ca](http://www.scc-csc.gc.ca)

## **UNLAWFUL ARREST LEADS TO UNREASONABLE SEARCH**

**R. v. Smith, 2011 ONCA 748**



A police officer received general and generic information from an untested informant that the accused was in possession of cocaine and was selling it in the Hamilton area. The informant further stated that the accused kept the cocaine inside his vehicle, a black Nissan with black rims, and at his house along with a firearm. However, the location of where the firearm was kept was unknown. The informant had a lengthy criminal record, was deeply entrenched in the criminal culture, and appeared to be motivated by the hope of consideration for his own outstanding charges at the time. There was no indication of the source of the informant's information and there were no specific details of any drug transaction. The police confirmed the information about the motor vehicle the accused drove and set up surveillance on his residence. He was seen leaving the residence and drove to a townhouse complex where a male walked to the accused's car and got in. The car proceeded to move slowly for about 10 metres and stopped, at which point the unknown male got out

and walked towards the complex. This male was unknown, was not detained, and was not seen carrying anything in or from the car. Because the windows were tinted no observations could be made of any activity and nothing was overheard.

The accused drove away, parked his vehicle, and entered a bank. When he returned to his car he was arrested, advised of his rights, and indicated he wanted to speak to counsel. However, instead of holding off the questioning, a police officer interviewed the accused as to the existence of a firearm and drugs at his residence. The accused and his car were searched and police found cocaine in his car, and cash and cell phones on his person. Using the evidence found from the post arrest searches as well as the accused's statements, the police applied for and obtained a tele-warrant to search his house. Cocaine, other drug paraphernalia, cash, a firearm, and ammunition were subsequently located.

The trial judge in the Ontario Court of Justice found the accused's arrest unlawful and arbitrary. The tip was from an untested informant and lacked any information as to the source of the tipster's alleged assertion that the accused was a drug dealer. This, combined with a very brief observation of the accused meeting with an unidentified person in the accused's vehicle, did not provide reasonable grounds for the arrest. "I find that the arrest fell short of passing the objective requirement insofar as reasonable grounds are concerned," said the judge. "Combining the vague information from a previously untested informant with the observation of one event which was also reasonably capable of innocent explanation is insufficient to meet the standard for objective belief of the commission of the offence subjectively believed by the officers. This information and observation certainly justified further observation and investigation but not an arrest." The judge also found a s. 10(b) *Charter* breach (right to counsel) at the time of arrest, which was conceded by Crown, to be serious. The evidence following the arrest was excluded and could not be used to support the search warrant of the accused's home. He was acquitted.

The Crown's challenge to the accused's acquittal before the Ontario Court of Appeal was dismissed. "We agree with the trial judge's characterization of the tip provided by the informant and the surveillance observations made by the police officer," said the Court. "The very short duration of the meeting between the [accused] and the unidentified person in the [accused's] car, the only fact relied on by the police to support the inference that the meeting involved a drug transaction, was, on any reasonable view, a neutral fact. It follows from the finding that the arrest was illegal that the subsequent search of the [accused] and his vehicle were unconstitutional. The search of the residence based upon a warrant founded on information flowing from the unconstitutional arrest and searches of the [accused] and the vehicle was also unconstitutional." These *Charter* breaches were compounded by the serious breach of the accused's right to counsel. The trial judge did not err in excluding the evidence under s. 24(2).

**Editor's note:** Facts of this case taken from 2009 ONCJ 641.

Complete case available at [www.ontariocourts.on.ca](http://www.ontariocourts.on.ca)

## **PERSONAL DISCOMFORT DOES NOT NECESSARILY AMOUNT TO EXCESSIVE FORCE**

**Richmond v. Her Majesty the Queen,  
[2011] S.C.C.A. No. 251**



The plaintiff, a 38-year-old man suffering from psychiatric challenges, resided in a home owned by his mother. One day, while in an agitated state due to perceived inattention by his parents, he made a number of threatening telephone calls to his father. The plaintiff's father contacted the Ontario Provincial Police (OPP). This conversation prompted officers to attend the plaintiff's home and knock on door. There was no response but officers could hear music playing inside the residence. Although the telephone was picked up when police called, no conversation ensued as the phone was hung up by the resident of the home. The police set up a perimeter around the

home and contacted the plaintiff's family physician. Based on the doctor's prior observations of the plaintiff and the police description of his current behaviour, the doctor signed a Form 1 under Ontario's *Mental Health Act* for the plaintiff's apprehension, which was communicated to the officers on scene. Police breached the front door, which had been barricaded by a motorcycle and a box of tools. Upon entry, the officers observed the plaintiff standing in the foyer. He was told to lie down and did so. A large knife was seen near him but he made no aggressive moves. He was handcuffed and taken to the hospital where the attending physician referred him to a mental health centre.

The plaintiff brought an action in the Ontario Superior Court of Justice against the OPP alleging it had used excessive force in apprehending him, which he felt was illegal. But the judge dismissed his claim, finding the OPP did not use excessive force in apprehending the plaintiff. "While [he] may have experienced some personal discomfort, as a result of the apprehension," said the judge, "that discomfort does not equate to a finding that the police used excessive force." His apprehension and transportation to the hospital was lawful. It was justified under the legislative authority of the *Mental Health Act*.

The plaintiff's appeal to the Ontario Court of Appeal was dismissed. The Court found the trial judge's decision turned on the findings of fact and no error was made. The plaintiff then sought leave to appeal before the Supreme Court of Canada. Chief Justice McLachlin and Justices Binnie and Deschamps, however, dismissed the plaintiff's application without reasons. The decision of the Ontario Superior Court judge therefore stands.

**Editor's note:** Facts of this case taken from 2010 ONSC 2738.

Complete case available at [www.canlii.org](http://www.canlii.org)

**[www.10-8.ca](http://www.10-8.ca)**

## 2010 POLICE REPORTED CRIME



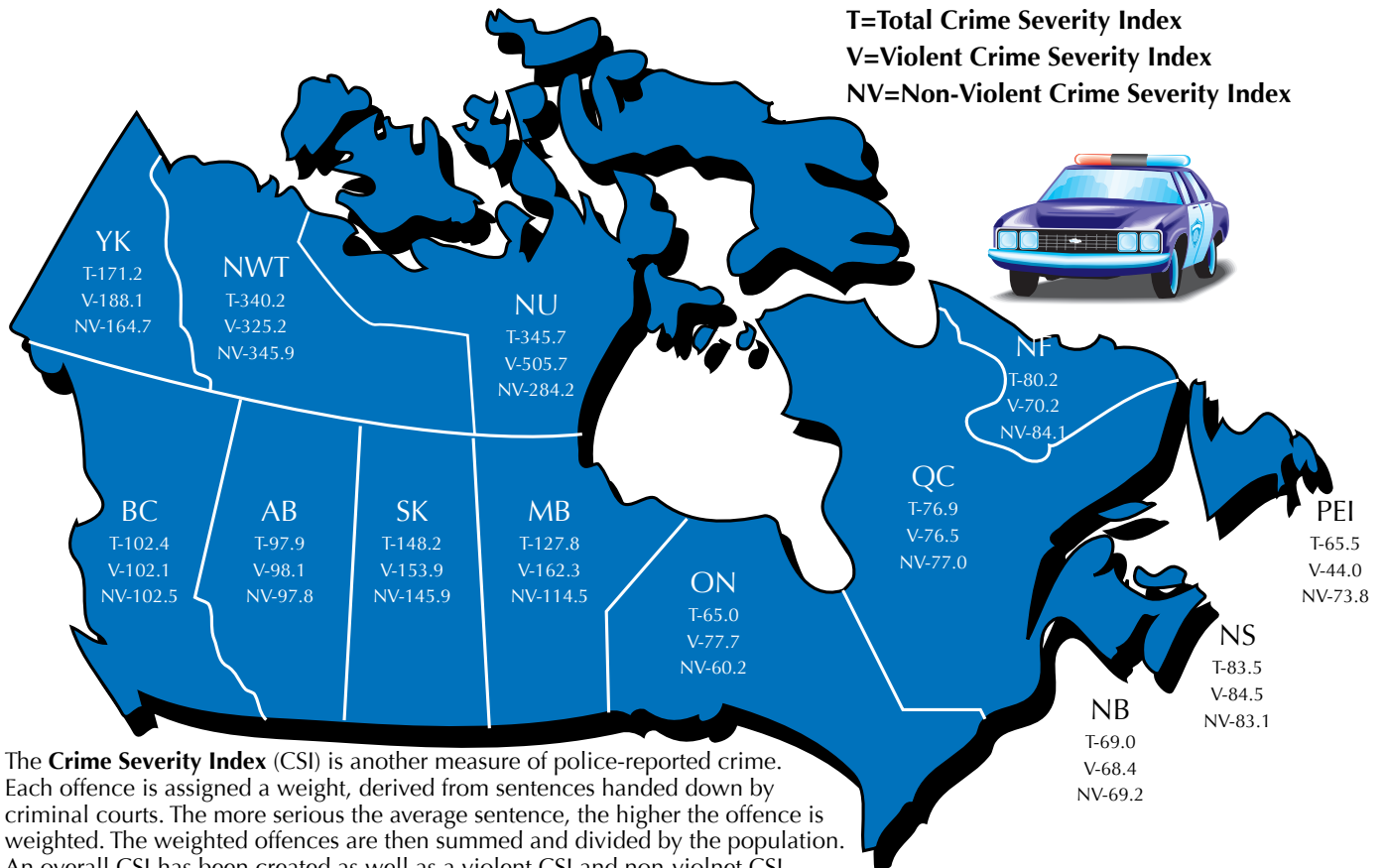
In July 2011 Statistics Canada released its “Police reported crime statistics in Canada, 2010” report. Highlights of this recent collection of crime data include:

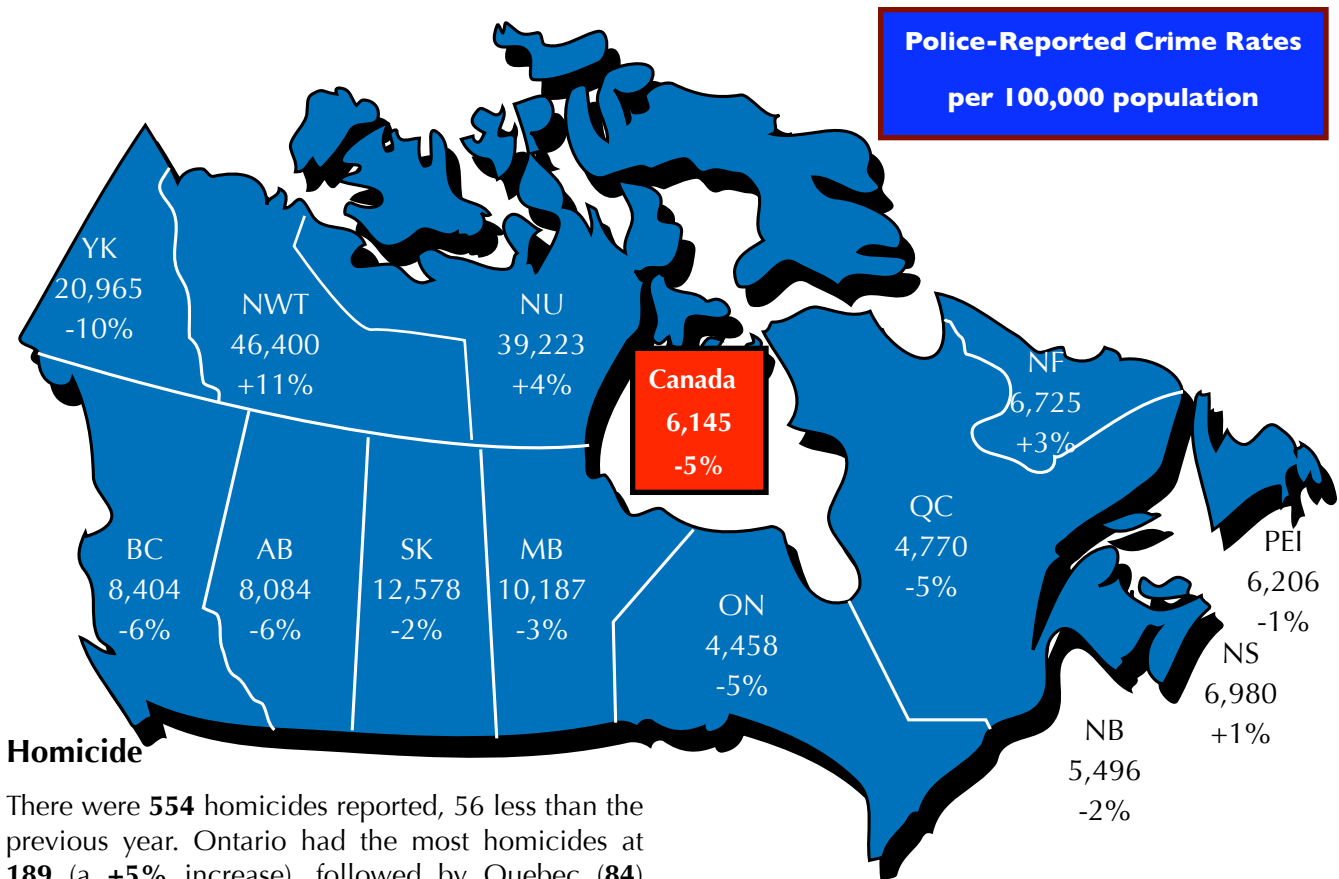
- there were **2,095,921** crimes (excluding traffic) reported to Canadian police in 2010; this represents **77,039** fewer crimes reported when compared to 2009 data.
- the total crime rate dropped **-5%**. This included a violent crime rate drop of **-3%** and a property crime rate drop of **-6%**.

Source: Statistics Canada, 2010, “Police-reported crime statistics in Canada, 2009”, Catalogue no. 85-002-X, released on July 21, 2011.

Police-Reported Impaired Driving Offences			
Province	Rate	Impaired Driving Offences	Rate change 2008 to 2009
SK	628	6,566	+3%
PEI	511	727	+10%
NF	416	2,119	+22%
AB	399	14,865	-14%
NS	363	3,426	+8%
BC	355	16,067	-8%
NB	350	2,628	+8%
MB	246	3,040	-18%
QC	208	16,424	-1%
ON	130	17,191	-7%

### Police-Reported Crime Severity Indexes





### Homicide

There were **554** homicides reported, 56 less than the previous year. Ontario had the most homicides at **189** (a **+5%** increase), followed by Quebec (**84**) British Columbia (**83**), and Alberta (**77**). Prince Edward Island reported no homicides while the Yukon and the Northwest Territories each reported only one. As for provincial or territorial homicide rates, Nunavut had the highest (**18.1** per 100,000 population) followed by Manitoba (**3.6**), Saskatchewan (**3.3**), Yukon (**2.9**), Northwest Territories (**2.3**) and Nova Scotia (**2.2**). As for Census Metropolitan Areas (CMA), Thunder Bay, ON had the highest homicide rate at **4.2**. The Canadian homicide rate was **1.6**.

CMA	Rate	CMA	Rate
Thunder Bay, ON	4.2	Greater Sudbury, ON	2.4
Regina, SK	3.7	Abbotsford-Mission, BC	2.3
Saskatoon, SK	3.7	Moncton, NB	2.2
Winnipeg, MB	2.8	Saint John, NB	1.9
Edmonton, AB	2.7	Kingston, ON	1.9
Halifax, NS	2.7	London, ON	1.8

### Canada's Top Ten Reported Crimes

Offence	Number
Theft Under \$5,000 (non-motor vehicle)	536,151
Mischief	339,831
Break and Enter	196,881
Administration of Justice Violations	176,560
Assault-level I	173,843
Disturb the Peace	117,903
Motor Vehicle Theft	92,683
Fraud	88,491
Impaired Driving	84,397
Uttering Threats	75,927

## Robbery

In 2010 there were **30,405** robberies reported, resulting in a national rate of **89** robberies per 100,000 population. Manitoba had the highest robbery rate followed by Saskatchewan, British Columbia, and Ontario.

Police-Reported Robberies			
Province/Territory	Rate	Robberies	Rate change 2009 to 2010
MB	176	2,177	-11%
SK	121	1,263	0
BC	108	4,878	-7%
ON	88	11,567	-6%
AB	86	3,213	-15%
QC	81	6,442	-6%
NWT	55	24	+84%
NS	52	486	-17%
YK	49	17	+84%
NU	42	14	-41%
NF	31	160	+37%
NB	19	142	-29%
PEI	15	22	+15%
<b>CANADA</b>	<b>89</b>	<b>30,405</b>	<b>-7%</b>

- Winnipeg, MB had the highest CMA rate of robbery in Canada (**258**), **-13%** lower than its 2009 rate. Saguenay, QC had the lowest rate (**19**) for the second year in a row. Three CMAs reported jumps of +20% or more in robbery rates; St. John's, NF (**+53%**), Brantford, ON (**+26%**), and Kitchener-Cambridge-Waterloo, ON (**+20%**).
- five CMAs reported declines in robberies of -30% or more; Saint John, NB (**-50%**), Kingston, ON (**-50%**), Trois-Rivieres, QC (**-31%**), Abbotsford-Mission, BC (**-30%**), and Moncton, NB (**-30%**).



## Top Ten CMA Robbery Rates per 100,000

CMA	Rate	CMA	Rate
Winnipeg, MB	258	Montreal, QC	142
Saskatoon, SK	199	Toronto, ON	128
Regina, SK	196	Edmonton, AB	118
Thunder Bay, ON	149	Calgary, AB	109
Vancouver, BC	147	Halifax, NS	95

## Break and Enter

In 2010 there were **196,881** break-ins reported to police. The national break-in rate was **577** break-ins per 100,000 people. Nunavut had the highest break-in rate (**2,035**) followed by the Northwest Territories (**1,629**) and Saskatchewan (**938**).



## Police-Reported Break-ins

Province/Territory	Rate	Break-ins	Rate change 2009 to 2010
NU	2,035	676	+3%
NWT	1,629	713	-2%
SK	938	9,806	-1%
MB	819	10,116	-5%
YK	718	248	-6%
BC	692	31,346	-8%
QC	680	53,733	-9%
NF	667	3,399	+17%
AB	606	22,533	-5%
NS	558	5,259	+3%
PEI	515	732	+1%
NB	483	3,633	+4%
ON	414	54,687	-5%
<b>CANADA</b>	<b>577</b>	<b>196,881</b>	<b>-6%</b>

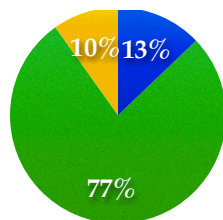
- break-ins accounted for about **15%** of all property crimes.
- **61%** of break-ins were to a residence, **28%** to a business location, and **11%** to other locations, such as a shed or detached garage.
- residential break-ins dropped **-4%** while business break-ins declined **-13%**.
- from 2000 to 2010, the break-in rate dropped by **-40%**.
- among CMAs, Saskatoon, SK reported the highest break-in rate (**845**) while Toronto reported the lowest (**307**) for a second straight year. Peterborough, ON (**+27%**), Saguenay, QC (**+21%**), and Moncton, NB (**+13%**) all reported double digit increases in the break-in rate, while Abbotsford-Mission, BC (**-37%**), Victoria, BC (**-29%**), Saint John, NB (**-24%**), Sherbrooke, QC (**-19%**), Kingston, ON (**-17%**), Regina, SK (**-16%**), Thunder Bay, ON (**-16%**), Vancouver, BC (**-13%**), Windsor, ON (**-11%**), Guelph, ON (**-10%**), and Ottawa, ON (**-10%**) all had double digit drops.

Top Ten CMA Break-in Rates per 100,000			
CMA	Rate	CMA	Rate
Trois-Rivieres, QC	875	Vancouver, BC	787
Regina, SK	856	Brantford, ON	775
Saskatoon, SK	856	St. John's, NF	766
Winnipeg, MB	810	Abbotsford-Mission, BC	727
Kelowna, BC	796	Gatineau, QC	713

**Drugs**

In 2010 there were **108,529** drug-related offences coming to the attention of police. These offences included possession, trafficking, production or distribution.

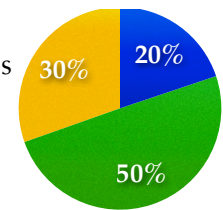
Possession Offences by Drug Type



- possession offences accounted for **73,588** of these crimes - cannabis (**56,870**); cocaine (**7,256**); and other drugs (**9,462**). Other drugs include heroin, crystal meth, and ecstasy;

- the trafficking, production, and distribution offences totaled **32,974** - cannabis (**16,404**); cocaine (**10,027**); and other drugs (**6,543**).

Trafficking, Production & Distribution Offences by Drug Type



- Other drugs
- Cannabis
- Cocaine

Drug-related Crime Rates by Province			
per 100,000 population			
Province	Cannabis rate	Cocaine rate	Other drugs rate
BC	421	106	64
SK	252	63	51
NS	251	34	46
QC	208	25	54
NF	205	38	67
NB	199	30	55
AB	195	76	37
ON	165	38	42
MB	157	58	30
PEI	108	22	41

- British Columbia had the highest drug related offence rates of all 10 provinces for cannabis and cocaine. Newfoundland was tops for other drugs.

Territory	Cannabis rate	Cocaine rate	Other drugs rate
NWT	1,261	293	114
NU	1,039	15	18
YK	327	130	64

- The territories continue to have some of the highest drug-related crime rates in Canada.
- Overall, drug offences were up in 2010 (**+10%**) from 2009, mainly due to a **+13%** rise in cannabis offences.

## Motor Vehicle Theft

In 2010 there were **92,683** motor vehicle thefts reported to police, down **(-15%)** from **107,992** in 2009 and down **-48%** from a decade ago.

- on average there were **254** vehicles stolen per day in Canada in 2010.
- the motor vehicle theft rate was **272** per 100,000 population.
- the most vehicles reported stolen was in Quebec (**24,410**) while the Yukon had the fewest vehicles stolen (**160**).

Police-Reported Motor Vehicle Thefts			
Province/Territory	Rate	Motor Vehicle Thefts	Rate change 2009 to 2010
NU	614	204	+2%
NWT	507	222	-5%
SK	477	4,988	-8%
YK	463	160	+18%
MB	453	5,596	-15%
AB	411	15,298	-18%
BC	352	15,957	-20%
QC	309	24,410	-11%
ON	171	22,611	-18%
NB	165	1,239	-4%
NS	136	1,282	-3%
NF	118	603	+30%
PEI	79	113	-30%
<b>CANADA</b>	<b>272</b>	<b>92,683</b>	<b>-15%</b>

- eight CMAs reported declines in motor vehicle thefts of **-25%** or more; Trois Rivieres, QC (**-41%**), Guelph, ON (**-37%**), Brantford, ON (**-31%**), Peterborough, ON (**-31%**), Barrie, ON (**-30%**), Ottawa, ON (**-30%**), Moncton, NB (**-27%**), Victoria, BC (**-27%**), Edmonton, AB (**-26%**), and Kelowna, BC (**-25%**).

## Top Ten CMA Vehicle Theft Rates per 100,000

CMA	Rate	CMA	Rate
Regina, SK	562	Saskatoon, SK	471
Abbotsford-Mission, BC	553	Edmonton, AB	446
Winnipeg, MB	503	Vancouver, BC	370
Kelowna, BC	494	Calgary, AB	369
Brantford, ON	474	Montreal, QC	361

## CANADA'S TOP 10 STOLEN VEHICLES 2010

1. 2000 Honda Civic SiR 2-door
2. 1999 Honda Civic SiR 2-door
3. 2002 Cadillac Escalade 4-door 4WD
4. 2004 Cadillac Escalade 4-door 4WD
5. 2005 Acura RSX Type S 2-door
6. 1997 Acura Integra 2-door
7. 2000 Audi S4 Quattro 4-door AWD
8. 2003 Hummer H2 4-door AWD
9. 2006 Acura RSX Type S 2-door
10. 2004 Hummer H2 4-door AWD

Source: Insurance Bureau of Canada, December 16, 2010

## Police Assaults

Assaulting a police officer rose **(+45%)** from 2009 to 2010. In 2010 there were **17,377** assault police officer offences compared to **11,837** the previous year. This increase may be attributable to new offences of assault with weapon/CBH to a peace officer and aggravated assault against peace officer which were recently added to the *Criminal Code*. These offences would have previously been reported under the general assault with weapon/CBH or aggravated assault provisions in the *Criminal Code*.

## **EXPLANATION OF 2.5 HOUR SEARCH DELAY AFTER ARREST NOT REQUIRED**

**R. v. Asp, 2011 BCCA 433**



The accused left a hotel in the middle of the night in a manner that a private security guard at the hotel found suspicious. He had left the hotel with a female and did not inform the front desk. The security guard followed the vehicle driven by the accused and called 911. During the 911 call the guard started to scream, reported his location, and then the phone went dead. The police attended and saw two males involved in an altercation. The accused's vehicle rolled forward and struck a pole. The collision dislodged the lid from the top of the white box in the backseat, exposing plastic bags of marijuana in the box. The accused and his female companion were initially arrested for possessing a controlled substance and then re-arrested for possession for the purpose of trafficking. The vehicle was towed to the police station where it was searched without a warrant about 2.5 hours after the arrest. A total of 13.59 kgs. of marijuana, found in 54 zip-lock bags, was seized. Although the police never investigated, arrested or charged the accused with theft from the hotel, he was charged with possessing marijuana for the purpose of trafficking.

At trial in British Columbia Supreme Court it was agreed that the police could have obtained a search warrant had they applied for one. There were no exigent circumstances such that evidence in the vehicle might have been lost or destroyed had they waited and applied for a warrant. Nor was there any risk evidence would have been removed from the vehicle while awaiting a warrant. It was further agreed that the police searched the vehicle as part of a drug investigation and they did not seek the accused's consent. The trial judge concluded that the police did not breach the accused's s. 8 Charter rights by searching his vehicle and seizing the marijuana. She found that both the plain view doctrine and the common-law power of search incidental to arrest applied. "Neither the initial seizure of the marijuana from the [accused's] vehicle

seen by the police in plain view, nor the subsequent search of the vehicle and the further seizure of marijuana in the context of a search incidental to arrest, constituted a violation of [the accused's] s. 8 Charter rights," said the judge. A conviction followed.

The accused appealed his conviction to the British Columbia Court of Appeal, contending that the warrantless search of his vehicle and the seizure of the drugs were unreasonable under s. 8 and that the drugs should have been excluded under s. 24(2). In his view, the facts neither supported the application of the plain view doctrine or the power of search incidental to arrest. He submitted, among other grounds, that the search of his vehicle did not fall within the common-law power of search incidental to arrest because the Crown failed to establish how much time passed between the arrest and the search and did not provide an explanation for any delay. In this case, the accused suggested that the distance from the place of arrest to the police station as well as how much time passed from the arrest until the vehicle was searched were not known.

### **Search Incidental to Arrest**

Justice Frankel, authoring the unanimous opinion for the Court, first cited a useful summary of the leading authority on the application of the common-law power of searching vehicles incidental to arrest from *R. v. Majedi*, 2009 BCCA 276:

- Officers undertaking a search incidental to arrest do not require reasonable and probable grounds; a lawful arrest provides that foundation and the right to search derives from it;
- The right to search does not arise out of a reduced expectation of privacy of the arrested person, but flows out of the need for the authorities to gain control of the situation and the need to obtain information;
- A legally unauthorized search to make an inventory is not a valid search incidental to arrest;
- The three main purposes of a search incidental to arrest are: one, to ensure the safety of the police and the public; two, to protect evidence; three, to discover evidence;

- The categories of legitimate purposes are not closed: while the police have considerable leeway, a valid purpose is required that must be “truly incidental” to the arrest;
- If the justification for the search is to find evidence, there must be a reasonable prospect the evidence will relate to the offence for which the person has been arrested;
- The police undertaking a search incidental to arrest subjectively must have a valid purpose in mind, the reasonableness of which must be considered objectively. [reference paras. omitted]

As for the delay between the arrests and the search, Justice Frankel found the search took place within a reasonable amount of time. Although there will be some cases in which the Crown will be required to provide a reasonable explanation for a delay between an arrest and a search, this was not such a case. Here, the police arrived at the scene of the altercation at 3:00 a.m. The accused was arrested shortly after that and the date and time stamp on photographs that were tendered as an exhibit at trial established that the search took place approximately two and one-half hours after the accused was taken into custody and his vehicle towed to the police station. “In my view, that period is prima facie reasonable,” said Justice Frankel. “There is no delay that the Crown needs to explain.”

Since the drugs were seized by the police in the lawful exercise of the power of search incidental to arrest, it was not necessary to address the application of the plain view doctrine. The accused’s appeal was dismissed.

Complete case available at [www.courts.gov.bc.ca](http://www.courts.gov.bc.ca)

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## **SAFETY OR EVIDENCE CONCERNS MAY JUSTIFY WAIVING KNOCK & ANNOUNCE**

**R. v. Sexton, 2011 NBCA 97**



The police swore an Information to Obtain (ITO) a warrant under the *Controlled Drugs and Substances Act* (CDSA) for a search of the accused’s apartment. In the month leading up

to the execution of the warrant, police officers had received information from various sources that the accused was trafficking in cocaine and other drugs. The ITO included information from a source that he had been at the apartment within the last 24 hours and had seen the accused in possession of what was believed to be cocaine. As part of their plan to obtain and execute the search warrant, the police were going to utilize a “hard” (“no-knock” or “dynamic”) entry. They chose a hard entry because they were concerned about:

1. officer safety: (the accused’s criminal past included convictions for weapons and drug related offences and an outstanding charge of assaulting a police officer. CPIC also contained two cautions about the accused, (i) violence and (ii) armed and dangerous);
2. the safety of those in neighbouring apartments: (if violence arose in the course of entering the apartment or conducting the search); and
3. the preservation of evidence: (cocaine dissolves easily and is therefore easily disposed of. Without the element of surprise, persons inside the apartment could the pour cocaine down the sink or a toilet bowl.)

The police confirmed that the accused was present in the apartment when two uniformed police officers knocked on the door under the ruse that they were looking to speak to his brother on a different matter. After they left, a team of four police officers, each armed with tactical rifles, wearing helmets, goggles, balaclavas, and dressed in emergency response uniforms with the word "POLICE" inscribed on the front and back of their vests, entered the apartment without notice by using a battering ram. The accused was arrested, the search warrant executed, and several charges were laid under the *Criminal Code* and the *CDSA*, which included possession of cocaine, ecstasy, hashish, LSD, a sawed-off shotgun, an operational replica AK-47 assault rifle, three 9 mm handguns and one .22 calibre handgun.

At trial in New Brunswick Provincial Court the judge concluded that the hard entry was unreasonable in the circumstances for three reasons:

- (1) the reliance by the police on the CPIC cautions was “absolutely comical”,
- (2) the police should have known the accused was not a threat because he was perfectly reasonable in his interactions with the two uniformed police officers enquiring about his brother, and
- (3) the police officers wore balaclavas. The judge found “there was no justification whatsoever” for their use, citing “an innate distaste and dislike for anonymity.”

Since the means employed to execute the warrant violated the accused’s s. 8 *Charter* rights, the judge excluded the evidence. He was acquitted on all charges.

The Crown appealed the judge’s findings that the search was conducted in an unreasonable fashion before the New Brunswick Court of Appeal. The Court first summarized the common law “knock and announce” rule:

In the ordinary course of events, police officers are required to make an announcement before forcing entry into a dwelling house. This is accomplished by giving “(i) notice of presence by knocking or ringing the doorbell; (ii) notice of authority, by identifying themselves as law enforcement officers and (iii) notice of purpose, by stating the lawful reason for entry.” [reference omitted, at para 23]

The police may, however, depart from “the knock and announce rule in circumstances where they have reasonable grounds to be concerned about their safety, the safety of others, or the destruction of evidence.” But when challenged, the police must explain why they thought it was necessary to do so. In determining whether the police had reasonable grounds for concern to justify use of an unannounced, forced entry, their decision must be judged by what was or should reasonably have been known to them at the time, not in light of how things turned out to be. After the fact assessments are unfair and inappropriate where officers must exercise discretion and judgment in difficult and fluid situations. As well, the police must be allowed a

certain amount of latitude in the manner in which they decide to enter premises. They cannot be expected to measure in advance, with nuanced precision, the amount of force the situation will require.

In this case, Justice Bell found the search to be reasonable in the circumstances, noting a number of factors:

- ◆ There are two practical reasons why police must take the search of someone else’s residence very seriously. First, it is highly likely that suspects will know the layout of the place being searched much better than the police. They will know potential means of escape and potential sources of weapons. Second, the person whose residence is being searched will, in most cases, have a better knowledge of who is present in the premises. Unknown layout and unknown occupancy provide a practical advantage to the person whose residence is being searched in the event that person wishes to destroy evidence or obstruct, evade, or cause injury to police.
- ◆ Police knew the accused had a criminal record for weapons and drug offences and was awaiting trial on a charge of assaulting a peace officer. Information appearing in CPIC constitutes a source of information which is used by virtually every police officer in Canada and whose information is communicated to, and relied upon, by courts throughout the country on a daily basis. Not only should police rely upon CPIC, they would no doubt be negligent and subject to disciplinary action if they choose to disregard it. The fact the CPIC cautions did not constitute a criminal record did not render them unreliable.
- ◆ The uneventful visit at the accused’s door changed nothing about his criminal record, outstanding charges, or the CPIC cautions. Nor did it change anything about the police knowledge or lack thereof about the layout of the premises or the occupants of the apartment. The accused’s response to a search of his premises for cocaine and other drugs might not

be the same as when responding to police questions concerning an unrelated matter. The courts are not to be "Monday morning quarterbacks" on these sorts of questions. The visit at the door was, at best, a neutral event and the police continued to reasonably hold the view that a hard entry was required.

- ◆ Courts should not attempt to micromanage the police choice of equipment. Here, the police said they wore the masks to protect them from the possibility of shattering glass or flames. Further, the police were not operating anonymously. Their vests contained the inscription "POLICE" on the front and back and officers removed their balaclavas and helmets within a few minutes after the apartment was secured.

The Crown's appeal was allowed, the accused's acquittals were set aside, and a new trial was ordered.

Complete case available at [www.canlii.org](http://www.canlii.org)

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## **SAFETY CONCERNS NOT OBJECTIVELY JUSTIFIED: ENTRY UNLAWFUL**

**R. v. Larson, 2011 BCCA 454**



Police were dispatched at about 10:45 a.m. to investigate a report that a distraught man had discharged some pepper-spray inside a vehicle and was now swimming in a lake.

When officers arrived the accused was swimming about 30 metres offshore in a rocky area not suited for swimming. Officers persuaded him to come to shore. He was frantic and said he was being pursued by people who were out to get him and were shooting at him. Suspecting he was in a state of drug-induced paranoia and acting in a manner that was likely to endanger his own safety, the accused was apprehended under s. 28 of British Columbia's *Mental Health Act*. During the 30-minute drive to the hospital, the accused said two men had invaded his home, and that people were trying to harm

him. He pointed to people in the vicinity, alleging that they were from the same group as the people who had gone to his home. He also said that people were shooting at him from passing vehicles. He asked police to drive quickly, not to stop at stoplights, and ducked down when they passed other vehicles. He said that he was scared to go back to his house and would not do so until it was safe.

Police decided to go to the accused's home to make sure there were no intruders. They also had a prior suspicion that he had a marijuana grow operation in it. An officer arrived at 11:50 a.m. and, while waiting for backup, spoke to a neighbour who said he was not aware of any incident having occurred at the accused's house. There was no sign of forced entry at the house and police could not see any indications that a home invasion had occurred (or was in progress). Nor was any activity or motion in the house detected. When back-up arrived at 12:25 p.m. officers found a sliding glass door unlocked and entered the house, announcing "Police" several times. There was no answer, no unusual sounds, and no signs of movement in the house. Police searched all three levels of the house. They found no one in the dwelling, and saw no evidence of forced entry, no blood stains, no furniture or other articles that appeared disturbed, and no other signs of a struggle. After locating a marijuana grow operation in the basement on the initial search, the police obtained a warrant, and conducted a second search pursuant to it.

At trial in British Columbia Provincial Court the officers testified that their purpose in going to the accused's home was solely to determine whether there was evidence of an assault and whether anyone who may have perpetrated the assault remained on the premises. The judge found that the warrantless entry into the home was lawful under the common law police power to protect public and individual safety. Not only did the police have a subjective belief that there might have been a home invasion and the perpetrators might still be inside, the belief was objectively reasonable. "The police officers clearly had a subjective, reasonable belief that they should enter the residence in order to investigate the claim of a home invasion and

whether or not it had occurred; furthermore, to determine if an assault had occurred, to determine if anyone was in the house, and to determine if there was any public safety concern and concerns that related to the safety of [the accused]," said the judge. "From an objective perspective, the perspective of a reasonable informed person, I find that the standard has ... been met in this case. ... I make that finding in spite of the obvious behaviour of [the accused] and his claims that people were shooting at him, when clearly that was not accurate or correct. But nevertheless, taking into account the constellation of evidence that was presented to the police at the scene here, I find their actions were reasonable." Since the warrantless search was lawful, the subsequent warrant, issued on the basis of evidence uncovered during the initial warrantless search, was valid. The accused was convicted of producing marijuana and he was sentenced to a 12-month conditional sentence.

The accused challenged the trial judge's ruling to the British Columbia Court of Appeal arguing the police had no common law or statutory duty to investigate his allegation that he had been the victim of a home invasion. He asserted that the police ought to have known that his allegations were the product of a paranoid delusion and were baseless because of his condition when apprehended. Since the warrantless search was unlawful, the search warrant based on the information obtained from this initial search rendered the warrant invalid and unreasonable under s. 8. In the accused's view, the evidence should have been excluded under s. 24(2). The Crown, on the other hand, submitted that the police had reason to believe that entry without a warrant was necessary to protect the lives or safety of the occupants and that there was no effective alternative to the warrantless entry.

In this case, the accused did not consent to the search of his home. "Without consent, a warrantless search is prima facie an unreasonable one," said Justice Groberman, writing

"Without consent, a warrantless search is prima facie an unreasonable one. Where a warrantless search is conducted in a person's residence, the Crown has the onus of showing that the search was lawful."

the opinion for the two member majority. "Where a warrantless search is conducted in a person's residence, the Crown has the onus of showing that the search was lawful." In deciding whether the police conduct in this case was lawful, the Court needed to determine the following:

1. whether the police conduct fell within the general scope of any duty imposed by statute or recognized at common law, and
2. whether the police power that was used was justified.

### The Initial Investigation

Justice Groberman found that the police had the duty to investigate the accused's report of a home invasion. He stated:

The accused was obviously delusional at the time of his apprehension, and the police were, no doubt, alive to the possibility that his report of a home invasion was not based in reality. That said, it was entirely possible that [the accused] had been the victim of a home invasion as he reported. Indeed, his paranoid delusions might have been triggered by such an experience. ... The veracity of the report was difficult to gauge, and there was reason to believe that the report might be false. Nonetheless, the police were justified in investigating the reports. [para. 37]

### The Search

The warrantless search, however, was a different matter. "A search that is conducted for the purpose of investigating crime requires a warrant," said Justice Groberman. "Only where there are concerns of a threat to life or personal safety will a warrantless entry and search be justified." In this case, the trial judge cited reasons for entry related to only investigating a completed crime - "to investigate the claim of a home invasion and whether or not it had occurred" and "to determine if an assault had occurred."

As for safety concerns, the officers did not suggest that they suspected that victims of crime remained in the house. Instead, the only people who police believed possibly might be in the house were the perpetrators of the home invasion. On this point, the Court of Appeal stated:

It is difficult to understand how the search could have been based on such considerations. There does not appear to be any objective basis for their belief that people might remain in the premises. Some two hours had passed between the latest possible time for the home invasion and the moment the police entered the house. [The accused] had not suggested that the home invaders had expressed an intent to become an occupying force in his home. Rather, he claimed that they were after him personally.

The police did have a suspicion that [the accused] had a marihuana grow operation at his home, and this might have been a plausible motive for people to invade his home. It is entirely unlikely, however, that any invaders would have remained in the home for two hours, particularly given that [the accused] would have had knowledge of their entry into the premises, and would have had escaped them.

The unlikelihood of the invaders remaining in the home was heightened by the fact that the police did not detect any movement, noise, or disturbance in the home when they waited outside, when they peered in the windows, and when they first entered through an unlocked door. The possibility that there were people in the home at that point was very remote. No basis for the suspicion that people were holed up inside was put forward, other than the fact that [the accused] had said that he did not know whether the invaders had remained at his premises or not.

It is also difficult to articulate what “public safety concerns” or “concerns that related to the safety of [the accused]” were present. Even if there was some remote possibility that invaders were in the house, the police did not, in their testimony, suggest any mechanism by which the purported home invaders endangered life or personal safety. [The accused] had, by the time police entered his home, been admitted to hospital, some considerable distance away. There was no

“A search that is conducted for the purpose of investigating crime requires a warrant. Only where there are concerns of a threat to life or personal safety will a warrantless entry and search be justified.”

possibility that he would be returning home imminently, so there was no immediate risk to his personal security. Police had attended at the house, and could easily observe the absence of any immediate threat to persons outside of the home. [paras. 44-47]

There was no objective support for the police officers’ subjective belief that it was necessary to enter the home in order to protect the accused or the general public. The Crown did not suggest that there were grounds for entry into the dwelling based on “exigent circumstances” connected with the preservation of evidence or to apprehend criminals, such that a warrantless entry under ss. 529.3(1) or 529.3(2)(b) of the *Criminal Code* would be authorized. The police could also have interviewed the accused after his paranoid symptoms had subsided, to determine whether his allegation of a home invasion continued to be of concern, or could have sought his consent to entry. The police did not consider either of these alternatives to warrantless entry. Since the initial search was unlawful, the facts gathered by the police in the course of this warrantless search were excised from the information to obtain and there was no basis on which the warrant could properly have been issued. The evidence was excluded under s. 24(2), the accused’s conviction was overturned, and an acquittal was entered.

### A Different View

Justice Smith disagreed with the majority. In her view the entry by police without warrant was justified. “Prudence dictated that the police not ignore [the accused’s] report,” she said. “For the police to decide that, because they could see no activity from outside the home, there were no public safety concerns – by which I mean concerns about the safety of people inside the home, including the

alleged assailants – would leave open the risk that medical aid would not be made available immediately to someone who needed it. It is unrealistic to suggest that the police could have sought [the accused's] consent to entry, given that he was suffering from delusions at the time; or that the police could have waited until his delusions had subsided. There was no way of knowing how long [the accused] would have taken to return to normalcy, if indeed he was expected to do so." Justice Smith would have dismissed the accused's appeal.

Complete case available at [www.courts.gov.bc.ca](http://www.courts.gov.bc.ca)

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## **POLICE MUST WAIT A REASONABLE TIME AFTER KNOCKING BEFORE ENTRY**

**R. v. Truong, 2011 BCSC 1483,**



A police officer, with 10 months experience, detected an odour of vegetative marihuana while patrolling. Six days later she attended with other, more experienced officers and, by walking the fence lines of properties in the area, determined that the odour was coming from a two story house with an attached garage. The police obtained a telewarrant under the *Controlled Drugs and Substances Act* to search the residence. Officers approached the front door, knocked three times, and stated "Police." When there was no reply, police knocked and announced again. An officer said she saw a slight movement of the blinds in a window next to the door. A battering ram was then immediately used to break open the door and the time from the first knock to the use of the battering ram was at most 45 seconds. Police entered and found more than 500 marihuana plants, fans, lights, and other equipment. The accused, who was the sole occupant of the home, was arrested upstairs near a bathroom and subsequently charged with producing marihuana and possession for the purpose of trafficking.

At trial in British Columbia Supreme Court a police corporal testified that the movement of the blinds

indicated that someone was inside and, for reasons of officer safety, it was not prudent for police to remain standing outside. He also said he was concerned about the general risks inherent in marihuana grow operation raids, such as weapons or booby traps. In spite of these police concerns, the accused alleged, among other grounds, that his rights under s. 8 of the *Charter* were breached because of the manner of police entry.

Justice Smith agreed. "In the absence of exigent circumstances, police executing a search warrant are required to knock first, announce their presence and purpose, and allow a reasonable time for any occupants to respond," said the judge. "There could be no magic period of time after which forced entry is deemed reasonable in all cases and the police are not expected to execute a search warrant with a stopwatch in hand. What is reasonable will depend on the circumstances of each case including the nature of the property and the amount of time an occupant might need to come to the door."

In this case, the judge noted that it was significant that this involved a two-story house, which may require a longer wait for a response than would a smaller home. As for the officer's safety concerns, he noted that the police had "no information to indicate any risk associated with this property" nor had they "engaged in surveillance prior to executing the warrant." The judge was also troubled that the movement of the blinds was inconsistent with the accused being found upstairs and the fact the officer who said she saw the blinds move made no notes about it. In finding a violation of the accused's rights, Justice Smith stated:

On all of the evidence, I conclude that the police in their eagerness to execute the warrant treated the "knock and announce" rule as a formality to get out of the way as quickly as possible rather than as a sincere attempt to give any occupants a reasonable opportunity to respond and cooperate. [para. 24]

The evidence was excluded and the charges were dismissed.

Complete case available at [www.courts.gov.bc.ca](http://www.courts.gov.bc.ca)

## FINGERPRINT CONSISTENT WITH OTHER CONCLUSION: ATTEMPT B&E OVERTURNED

R. v. Ricketts, 2011 BCCA 402



A 41-foot motor vessel moored in a public marina was broken into and a large tackle box and toolbox were stolen. The vessel was for sale and had been cleaned some six weeks prior to the break-in. Entry was gained through an unlocked sliding window on the starboard side of the cabin. Prints from three fingers of the accused's left hand were lifted from a fixed pane of glass on the port-side cabin window. The prints formed the impression of the accused's left hand being placed against the glass from above and, with minor slippage evident, were indicative of his having pressed downward and to the left on the glass to some extent. These were the only prints found anywhere on the vessel except for some unidentifiable smudged prints on the starboard-side window. The accused was charged with breaking and entering the vessel and committing theft.

At trial in British Columbia Supreme Court the accused did not testify. The judge was not satisfied the fingerprint evidence proved the accused was the person who actually broke into the vessel through the starboard-side window and committed the theft, but he found the accused had attempted to break in and enter the vessel through the port-side cabin window. Although the evidence was entirely circumstantial, the judge found there was no other rational conclusion. The accused was found guilty of the lesser included offence of attempting to break and enter to commit an indictable offence.

The accused appealed, arguing that the trial judge's verdict was unreasonable and should be set aside. In his view, the evidence went no further than to raise a suspicion that he committed the offence. The Crown,

on the other hand, submitted that the trial judge's verdict was supported by the evidence.

Justice Lowry, delivering the Court of Appeal's decision, found the trial judge's reasoning flawed. "Once it was determined the evidence does not establish (beyond a reasonable doubt) it was the [accused] who broke into the vessel, his fingerprints establish only that he was on board at some time after the cabin structure was cleaned," said Justice Lowry. "I see no evidentiary basis for the conclusion that the only rational explanation for the [accused] having applied pressure to the fixed pane of the port-side window whenever he was on board was, in the judge's words, 'for the purpose of breaking and entering the vessel to commit an indictable offence therein, i.e. theft'. Clearly, the [accused] was trespassing but it cannot follow from that he had to be attempting to break into the vessel when he pressed his hand against the window." The evidence of the

"Once it was determined the evidence does not establish ... it was the [accused] who broke into the vessel, his fingerprints establish only that he was on board at some time after the cabin structure was cleaned."

accused's fingerprints was at least as consistent with his looking into the cabin from the port side as it is with his having attempted to open the window to break in:

His purpose may have been to ascertain whether there was anything in the cabin he might take, but even that does not mean he was intending to break into the cabin at the time he pressed his hand against the fixed pane of the window. Evidence which establishes that at some time the [accused] was on the vessel and pressed his hand against a part of a cabin window that was not even the part that opened, does not prove beyond a reasonable doubt that, at that time, he had formed the intention to break into the cabin and had actively taken steps to do so. I do not consider it reasonable to conclude otherwise. The evidence of the [accused's] fingerprints cannot be said to be inconsistent with any conclusion other than guilt. [para. 12]

The accused's appeal was allowed, the guilty verdict was set aside, and a not guilty verdict was substituted.

Complete case available at [www.courts.gov.bc.ca](http://www.courts.gov.bc.ca)

## **POLICE HAD REASONABLE SUSPICION OF DRUG ACTIVITY: ENTRAPMENT NOT PROVEN**

**R. v. Faqi, 2011 ABCA 284**



As part of a drug investigation known as Operation Shot Glass, undercover police officers would enter bars in downtown Calgary. They had no particular target in mind but wanted to observe who was contributing to the drug trade within the bar. Having advance information of drug activity in the Melrose Cafe (tips), undercover officers entered and approached the accused and his friend. Although they had no information the accused had been selling drugs, he and his friend were playing pool and their clothing stood out. They were more casually dressed than the business dress of other bar patrons. The officers initiated contact with the two men, which led to games of pool as well as eating and drinking alcohol with them. After about an hour, an officer pretended to make a telephone call away from the accused and then told his fellow undercover officer that he was having trouble “getting”. Overhearing this conversation, the accused’s friend offered to get drugs for the officers. The officer said he wanted to purchase \$100 worth of powder cocaine. But the accused’s friend unsuccessfully made several calls in an attempt to get some. When the officers indicated they would accept crack cocaine, the accused interrupted, stating that he could call “his guy” instead. He contacted a drug dealer who ultimately refused to sell the officers anything, suspecting they were police. The accused then volunteered that he could remedy the situation. He left the bar, returning shortly to pass one of the officers a rock of crack cocaine under the table. He received \$100 from the officer which he then took outside to pay the dealer. He was subsequently charged with trafficking in cocaine and possessing proceeds of crime.

At trial in Alberta Provincial Court the judge found the Crown had proven its case beyond a reasonable doubt. However, she granted a stay of proceedings because the police had inadequate grounds to approach the accused in the bar and had entrapped

him in doing so. The police had no reasonable suspicion that the accused was already engaged in drug trafficking and they were not engaged in a bona fide inquiry when they bought drugs from him. She concluded that the evidence did not support a reasonable suspicion that criminal activity was occurring throughout all of the bars in downtown Calgary, even though she held that when police entered the bar in question they had reason to believe drug trafficking may be occurring. Alternatively, she found the police went beyond providing an opportunity to commit the offence and actually induced its commission through a strategy which exploited the bonds of friendship fuelled by alcohol.

The Crown appealed the stay of proceedings to the Alberta Court of Appeal.

### **Entrapment**

The defence of entrapment may only be raised after the Crown has proven beyond a reasonable doubt that an accused committed the crime. A stay of proceedings should then only be entered in the “clearest of cases,” where the conduct of police offends the basic values of community. The entrapment defence is available when:

- Police provide a person with an opportunity to commit an offence without acting either on a reasonable suspicion that the person is already involved in a criminal activity or pursuant to a bona fide inquiry; or
- Although having such a reasonable suspicion or acting in the course of a bona fide inquiry, they go beyond providing an opportunity and induce the commission of an offence.

### **A bona fide investigation?**

When the police do not have a reasonable suspicion about a specific individual involved in a crime, they may nonetheless be engaged in a bona fide investigation and present an opportunity to commit a crime where it is reasonably suspected that certain criminal activity is occurring at a particular location or area (which could include a building or premises). In such a case, the police may provide

opportunities in a random way to people associated with the location under suspicion, even if those people are not themselves under suspicion. If the investigation is not bona fide, the actions of the police will amount to impermissible random virtue testing and constitute entrapment.

In this case, the Court of Appeal ruled that the trial judge “erroneously concluded that the potential geographic scope of this inquiry was all the bars in downtown Calgary and that the evidence did not support a reasonable suspicion that criminal activity was occurring throughout that large geographic area.” The police had the necessary reasonable suspicion attaching to the Melrose Cafe that drug trafficking may be occurring. They were therefore acting in the course of a bona fide investigation. “The trial judge made an error of law in failing to appreciate that the scope of the inquiry into whether police were engaged in a bona fide investigation may be a much smaller area under a widespread drug investigation, and that the bona fide analysis should address whether police had reasonable suspicion that criminal activity was occurring in that specific area,” said the Court.

Since the police were engaged in a bona fide investigation, it was not necessary for the Court of Appeal to determine whether police had a reasonable suspicion that the accused was drug trafficking prior to the time he was presented with the opportunity to sell the drugs.

### Inducement

Even if the police were acting within the course of a bona fide investigation, entrapment could still be established if the police induced the accused to sell drugs to them. The trial judge had concluded that inducement occurred because the police engaged in and exploited the bonds of social friendship, fuelled by alcohol and food, during the hours they spent with the accused in the bar. After considering a number of factors, the Court of Appeal disagreed and found the police did not induce the commission of an offence as suggested by the trial judge. Instead,

“[D]rug trafficking is notoriously difficult to detect without some aspect of undercover involvement.”

the Court noted the accused volunteered to commit the crime, having overheard a conversation in which the undercover officers indicated an interest in buying cocaine from his friend:

[D]rug trafficking is notoriously difficult to detect without some aspect of undercover involvement. Further, the police did not make any request of [the accused] whatsoever; their interest and communication relating to the drug sale was directed to his friend. [The accused] spontaneously interposed himself into the transaction. No reward was offered to him. Any concrete benefit to him would, conceivably, come only by way of commission paid to him by the drug trafficker for acting as a middle-man. No threats were made and no illegal action was taken by the police. [para. 25]

The police conduct in this case was not entrapment and undercover officers did not induce the accused to commit the crime of drug trafficking. The Crown’s appeal was allowed, the stay of proceedings was lifted, convictions for cocaine trafficking and proceeds of crime were entered, and the matter was remitted back to the trial judge for sentencing.

Complete case available at [www.albertacourts.ab.ca](http://www.albertacourts.ab.ca)

## LEGALLY SPEAKING:

### ENTRAPMENT



“Entrapment recognizes that there are limits on what the police can do in the suppression of criminal activity. Those limits reflect community standards of fairness and decency. When a court gives effect to an entrapment claim and stays a proceeding, it refuses to condone state conduct that runs contrary to those community standards. It does so by refusing to lend its processes to the prosecution of those who are ensnared by the offensive state conduct” - Ontario Court of Appeal Justice Doherty, *R. v. Ahluwalia*, (2000) 139 OAC 154.

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