JUSTICE INSTITUTE of BRITISH COLUMBIA

IN SERVICE: 10-8

A PEER READ PUBLICATION

IN MEMORIAM

On December 31, 2020, 37-year-old Calgary Police Service Sergeant Andrew Harnett was killed in the line of duty. At about 10:50 p.m., Sergeant Harnett conducted a traffic stop in the area of Falconridge Boulevard and Falconridge Drive N.E. During the traffic stop, the vehicle fled, striking Sergeant Harnett in the process. Other officers were nearby and rendered aid as quickly as possible, while EMS rushed to their side. Paramedics and fellow officers fought to save his life, but he was pronounced deceased at hospital.

Sergeant Harnett served with the Calgary Police Service for 12 years after first joining the military police. He was a passionate sports fan, loved NFL football - especially the Miami Dolphins - and was a loyal Hamilton Tiger-Cats fan. Sergeant Harnett and his spouse were expecting their first child in the summer of 2021.

~ Sergeant Andrew Harnett~

"He knew the risks of the job and showed up everyday regardless."

Harnett Family Statement

Source: Calgary police officer killed in the line of duty and Harnett Family Statement.

Highlights In This Issue

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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.

5 day weekend: freedom to make your life and work rich with purpose.

Nik Halik & Garrett B. Gunderson.

Austin, TX: Bard Press, 2017.

G 179 H35 2017

Exercise-based interventions for mental illness: physical activity as part of clinical treatment.

edited by Brendon Stubbs & Simon Rosenbaum.

London, UK; San Diego, CA: Elsevier: Academic Press, 2018.

RC 455.2 E947 E94 2018

Evil: the science behind humanity's dark side.

Julia Shaw.

Toronto, ON: Doubleday Canada, 2019.

BF 789 E94 S53 2019

Fundamental justice: section 7 of the Canadian Charter of Rights and Freedoms.

Hamish Stewart.

Toronto, ON: Irwin Law, 2019.

KE 4381.5 S74 2019

Great at work: how top performers do less, work better, and achieve more.

Morten T. Hansen.

New York, NY: Simon & Schuster, 2018.

HD 57 H356 2018

Lead with a story: a guide to crafting business narratives that captivate, convince, and inspire.

Paul Smith.

New York, NY: American Management Association, 2012.

HD 30.3 S5774 2012

The mediator's toolkit: formulating and asking questions for successful outcomes.

Gerry O'Sullivan.

Gabriola Island, BC: New Society Publishers, 2018.

HM 1126 O885 2018

Mental: everything you never knew you needed to know about mental health.

Dr. Steve Ellen & Catherine Deveny.

London, UK: Head of Zeus, 2018.

RA 790 E44 2018

Never enough: the neuroscience and experience of addiction.

Judith Grisel.

New York, NY: Doubleday, 2019.

RC 564 G75 2019

The PTSD workbook: simple, effective techniques for overcoming traumatic stress symptoms.

Mary Beth Williams, PhD, LCSW, CTS & Soili Poijula, PhD.

Oakland, CA: New Harbinger Publications, Inc., 2016.

RC 552 P67 W544 2016

Simplify work: crushing complexity to liberate innovation, productivity, and engagement.

Jesse W. Newton.

New York, NY: Morgan James Publishing, 2019.

HD 58.9 N48 2019

Skin in the game: hidden asymmetries in daily life.

Nassim Nicholas Taleb.

New York, NY: Random House, 2018.

HM 1101 T35 2018

Teaching, coaching and mentoring adult learners: lessons for professionalism and partnership.

edited by Heather Fehring & Susan Rodrigues.

Abingdon, Oxon; New York, NY: Routledge, an imprint of the Taylor & Francis Group, 2017.

LC 5225 L42 T43 2017

SHARE IT. DON'T WEAR IT.

IT'S TIME TO SPEAK UP ABOUT MENTAL HEALTH.

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

BCFirstRespondersMentalHealth.com

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

www.BCFirstRespondersMentalHealth.com

BC's MINISTRY OF PUBLIC SAFETY RELEASES POLICE DOG STATISTICS

In late 2020 the Policing and Security Branch of BC's Ministry of Public Safety and Solicitor General released data reported to the Director of Police Services on the use of Police Service Dogs (PSD) for 2019.

1,703 The total number of PSD **locations, apprehensions and arrests**. This included 1,062 by the RCMP and LMIPDS followed by the Vancouver Police (505), Victoria Police (55), Saanich Police (55) and West Vancouver Police (26).

291 The total number of **subjects bitten** by a PSD. A bite is defined as *"a police dog's use of mouth and teeth to grab or hold a person's body or clothes"*. The RCMP and LMIPDS accounted for 183 bites, followed by Vancouver (101), Victoria (4), West Vancouver (1) and Saanich (2). There were nine non-subject civilians and 10 non-subject police officers bitten.

5,101 The total number of **tracks or searches for suspects**. This included 3,901 by the RCMP and LMIPDS. Vancouver (965), Saanich (109), Victoria (92) and West Vancouver (34) followed.

1,546 The total number of **apprehensions by bite or display**. There were 926 apprehensions made by the RCMP and LMIPDS, while Vancouver made 515, followed by Victoria (52), Saanich (27) and West Vancouver (26).

276 The total number of tracks or searches for missing persons.

357 The total number of searches for drugs. This included 321 by the RCMP and LMIPDS followed by Victoria (31), Vancouver (4) and West Vancouver (1).

Abbotsford, Delta, New Westminster, and Port Moody form part of the RCMP Lower Mainland Integrated Police Dog Service (LMIPDS).

376 The total number of searches for explosives or firearms. There were 281 by the RCMP and LMIPDS, while Vancouver made (43). Transit Police (31) and Victoria (21) followed.

1,162 The total number of searches for evidence. This included 1,046 by the RCMP and LMIPDS followed by Vancouver (41), Victoria (40), Saanich (25) and West Vancouver (10).

320 The total number of community relations or other events using a PSD. This included 159 by the RCMP and LMIPDS followed by Transit (60), Victoria (40), Vancouver (38), Saanich (19) and West Vancouver (4).

0 The total number of crowd control uses involving a PSD. This is down from two (2)uses in 2018.

PSD Locations, Apprehensions & Arrests

Police Agency	2016	2017	2018	2019
RCMP & LMIPDS	2,484	2,113	1,739	1,062
Vancouver	583	555	522	505
Victoria	91	56	53	55
Saanich	23	34	32	55
West Vancouver	30	25	22	26
Total	3,211	2,783	2,368	1,703

All Police Services
2016>2019
Locations
Apprehensions
Arrests
-47%

RCMP + LMIPDS
2016>2019
Locations
Apprehensions
Arrests
-57%

VPD, VicPD, SPD, WVPD
2016>2019
Locations
Apprehensions
Arrests
-12%

PSD Bites

Police Agency	2016	2017	2018	2019
RCMP & LMIPDS	221	213	248	183
Vancouver	166	99	111	101
Victoria	11	7	11	4
Saanich	5	1	0	2
West Vancouver	1	6	3	1
Total	404	326	373	291

All Police Services
2016>2019
Bites
-28%

RCMP + LMIPDS
2016>2019
Bites
-17%

VPD, VicPD, SPD, WVPD
2016>2019
Bites
-41%

POLICE FIREARM DISCHARGES RISE

In 2019 there were 15 firearm discharge incidents in an operational setting as reported by BC police. Two incidents arose from independent police agencies while 13 were reported by the RCMP. This is up 200% from 2018, when only five such incidents were reported.

2019 POLICE FIREARM DISCHARGE INCIDENTS

Police Agency	Incidents
New Westminster	1
Transit	1
RCMP	13
TOTAL	15

All Police Services

2018>2019
Police Firearm Discharge Incidents
Operational Setting

+200%

POLICE AGENCY	FIREARM DISPLAYS (NUMBER OF SUBJECTS/EDP)		
	2019	EDP	%EDP
RCMP	900	141	16%
Vancouver	533	107	20%
Victoria	119	26	22%
Abbotsford	88	10	11%
New Westminster	42	5	12%
Delta	41	6	15%
West Vancouver	33	6	18%
Transit	26	3	12%
Port Moody	17	2	12%
Saanich	12	4	33%
Central Saanich	7	1	14%
Nelson	4	0	0%
Oak Bay	3	1	33%
Stl'atl'imx	2	0	0%
Total	1827	312	17%

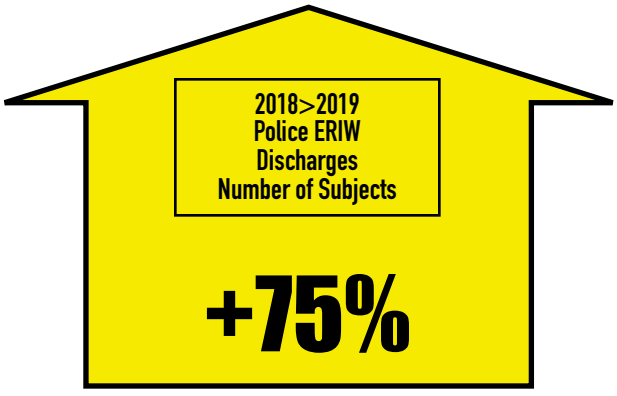
Police Firearm Discharge Incidents / Persons Killed and Injured

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	Total
Discharges	16	13	29	9	9	10	10	17	12	9	14	5	15	168
Killed	4	0	8	3	4	4	1	6	7	4	2	3	4	50
Injured	3	5	9	2	1	2	4	4	4	5	5	1	4	49

BC's INTERMEDIATE WEAPON USE STATISTICS RELEASED

In November 2020, the Policing and Security Branch of BC's Ministry of Public Safety and Solicitor General released the intermediate weapon use and data reported by BC police agencies for 2012-2019.

103 The total number of **Extended Range Impact Weapon** (ERIW) discharges by police (number of subjects). This is up from **59** in 2018 and **41** in 2017.



Extended Range Impact Weapon

POLICE AGENCY	ERIW DISCHARGES (NUMBER OF SUBJECTS)		
Jurisdiction	2018	2019	Change
Vancouver	27	67	+148%
Abbotsford	10	14	+40%
Victoria	5	12	+140%
RCMP	11	10	-9%
Others	6	0	-
Total	59	103	+74%

53% The percentage of **ERIW Discharges** by police where the subject of discharge was listed as an "emotionally disturbed person" (EDP).

ERIW DISCHARGES
(NUMBER OF SUBJECTS/EDP)

POLICE AGENCY	2019	EDP	%EDP
Vancouver	67	34	51%
Abbotsford	14	7	50%
Victoria	12	6	50%
RCMP	10	8	80%
Total	**103**	**55**	**53%**

109 The total number of **ERIW Displays** by police (number of subjects). Of these subjects, **28%** were listed as EDP.

ERIW DISPLAYS
(NUMBER OF SUBJECTS/EDP)

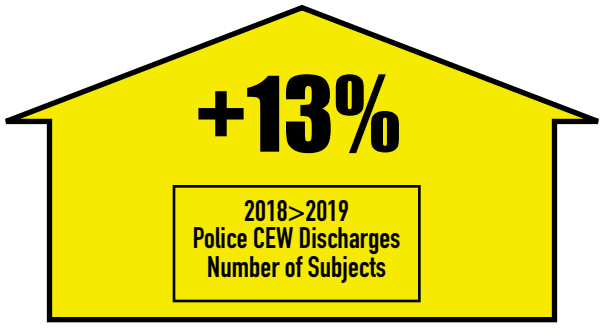
POLICE AGENCY	2019	EDP	%EDP
Vancouver	272	70	26%
Abbotsford	32	4	13%
Victoria	24	5	21%
RCMP	21	11	52%
Delta	11	4	36%
New Westminster	10	5	50%
West Vancouver	5	5	100%
Saanich	4	3	75%
Oak Bay	2	1	50%
Port Moody	2	1	50%
Total	**383**	**109**	**28%**

Conducted Energy Weapon

289 The total number of **Conducted Energy Weapon (CEW) Discharges** by police (number of subjects). This is up from **255** in 2018 and **252** in 2017.

CEW DISCHARGES
(NUMBER OF SUBJECTS)

POLICE AGENCY	2018	2019	Change
RCMP	181	199	+9.9%
Vancouver	47	65	+38%
Victoria	11	14	+27%
Abbotsford	1	7	+600%
Delta	1	1	0%
Nelson	2	1	-50%
New Westminster	2	1	-50%
Saanich	3	1	-67%
Others	7	0	-
Total	**255**	**289**	**+13%**



54% The percentage of **Conducted Energy Weapon (CEW) Discharges** by police where the subject of discharge was listed as EDP.

CEW DISCHARGES (NUMBER OF SUBJECTS/EDP)			
POLICE AGENCY	2019	EDP	%EDP
RCMP	199	104	52%
Vancouver	65	33	51%
Victoria	14	8	57%
Abbotsford	7	4	57%
Delta	1	1	100%
Nelson	1	0	0%
New Westminster	1	1	100%
Saanich	1	1	100%
Total	**289**	**152**	**54%**

CEW DISPLAYS (NUMBER OF INCIDENTS)	
POLICE AGENCY	2019
Vancouver	258
RCMP	230
Victoria	41
Abbotsford	12
Delta	11
New Westminster	7
Saanich	7
Transit	6
West Vancouver	3
Oak Bay	2
Port Moody	1
Central Saanich	1
Nelson	1
Total	**580**

OC SPRAY

218 The total number of **Oleoresin Capsicum (OC) Spray Discharges** by police (number of subjects). This was down from **230** in 2018.

2018>2019
Police OC Discharges
Number of Subjects
-5.2%

OC SPRAY DISCHARGES (NUMBER OF SUBJECTS)			
POLICE AGENCY	2018	2019	Change
RCMP	141	120	-14.9%
Vancouver	39	49	+26%
Abbotsford	13	21	+62%
Victoria	22	18	-18%
Transit	4	4	0%
New Westminster	1	2	+100%
West Vancouver	3	2	-33%
Delta	0	1	-
Central Saanich	0	1	-
Others	7	0	-
Total	**230**	**218**	**-5.2%**

33% The percentage of **OC Spray Discharges** by police where the subject of discharge was listed as EDP.

OC SPRAY DISCHARGES (NUMBER OF SUBJECTS/EDP)			
POLICE AGENCY	2019	EDP	%EDP
RCMP	120	41	34%
Vancouver	49	9	18%
Abbotsford	21	7	33%
Victoria	18	10	56%
Transit	4	3	75%
New Westminster	2	0	0%
West Vancouver	2	0	0%
Delta	1	1	100%
Central Saanich	1	0	0%
Total	218	71	33%

31% The percentage of **OC Spray Displays** by police where the subject of discharge was listed as EDP.

OC SPRAY DISPLAYS (NUMBER OF SUBJECTS/EDP)			
POLICE AGENCY	2019	EDP	%EDP
Abbotsford	2	0	0%
Saanich	2	1	50%
Transit	2	1	50%
Vancouver	6	0	0%
Victoria	10	5	50%
RCMP	7	2	29%
Total	29	9	31%

BATON

68 The total number of **Baton Applications** by police (number of subjects). This was down from **72** in 2018.

-5.6%

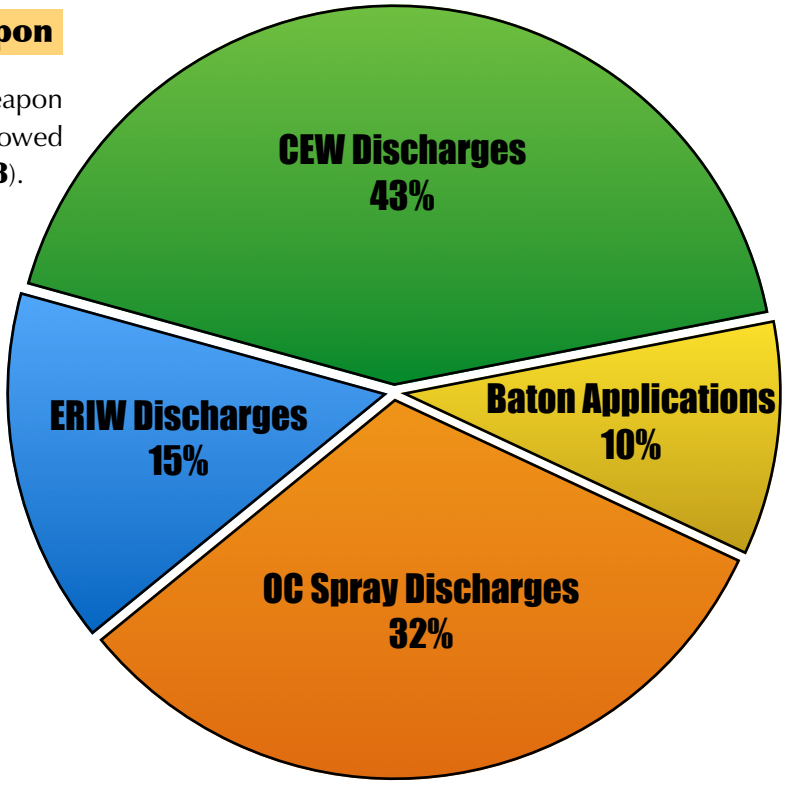
BATON APPLICATIONS (NUMBER OF SUBJECTS)			
POLICE AGENCY	2018	2019	Change
Vancouver	35	43	+23%
RCMP	11	15	+36%
Abbotsford	5	4	+20%
Transit	7	3	-57%
West Vancouver	6	2	-67%
Delta	2	1	-50%
Others	6	0	-
Total	72	68	-5.6%

32% The percentage of **Baton Applications** by police where the subject of discharge was listed as EDP.

BATON APPLICATIONS (NUMBER OF SUBJECTS)			
POLICE AGENCY	2019	EDP	%EDP
Vancouver	43	11	26%
RCMP	15	5	33%
Abbotsford	4	1	25%
Transit	3	3	100%
West Vancouver	2	2	100%
Delta	1	0	0%
Total	68	22	32%

Most Preferred Intermediate Weapon

In 2019, the CEW was the intermediate weapon most often used by police (**289**). This was followed by OC Spray (**218**), ERIW (**103**) and Baton (**68**).



BC CEW DISCHARGE DATA 2019			
	RCMP	Non-RCMP	Total
# of CEWs	1,928	493	2,421
# of CEW certified officers	1,928	966	2,894
CEW discharges	199	90	289
Effective discharges	155	69	224
Probe discharges	170	52	222
Contact stun discharges	22	23	45
Probe+Contact stun discharges	7	15	22
1 Cycle cases	118	58	176
2 Cycle cases	60	22	82
3 Cycle cases	21	10	31
Subject Characteristics for Discharges			
Male subjects	187	86	273
Female subjects	12	4	16
Under 18 years of age	7	1	8
18-69 years of age	192	89	281
70 years of age and older	0	0	0
Under influence drugs/alcohol	130	47	177
Emotionally disturbed	104	48	152
Armed with weapons	115	50	165
Injuries for discharges			
Probes broke skin	132	53	185
Subjects with non-trivial injury	14	15	29
Deaths proximal to discharge (proximal does not mean "caused by")	2	0	2
Officers with non-trivial injury	0	8	8

ROADSIDE DENIAL OF ACCESS TO COUNSEL A SERIOUS CHARTER VIOLATION

R. v. Landry, 2020 NBCA 72

After being stopped driving by police at 2:48 a.m., an officer detected an odour of alcohol on the accused's breath. The accused admitted to having consumed some alcohol and an approved screening device (ASD) demand was made for a breath sample at 2:55 a.m. But he refused to exit his vehicle. After three orders to get out and an obstruction warning, the accused exited his vehicle while holding his cell phone. The officer told the accused to leave his cell phone in the vehicle or it would be seized. On the accused's sixth attempt to provide a sample, after being told of the consequences of refusing to comply, he registered a fail. At 3:15 a.m. the accused was arrested and informed of his s. 10(b) *Charter* right to counsel.

The accused told the officer he had a lawyer and wanted to speak with him immediately using his cell phone. But the officer refused to let the accused call right away. They arrived at the station at 3:40 am, and several unsuccessful attempts were made to contact a lawyer (see event grid). Then, at 4:34 am, the accused was given the following *Prosper* warning:

You have already been informed of your right to contact duty counsel or another lawyer. You have clearly indicated that you want to talk to a lawyer, but you have changed your mind (or you have not clearly indicated to me whether you want to talk to a lawyer).

You have the right to a reasonable opportunity to contact a lawyer for advice and, before obtaining evidence from you, I am required to wait until you exercise or waive that right. Do you want to waive your right to contact duty counsel or another lawyer?

EVENT GRID

Time	Event
2:48 a.m.	Vehicle stop.
2:55 a.m.	ASD demand made.
3:00 a.m. - 3:10 a.m.	5 unsuccessful attempts made to blow in device.
[redacted]	On 6th attempt accused registered a "fail".
3:15 a.m.	Accused arrested and informed of s. 10(b) Charter rights. Accused replied he had a lawyer and wanted to consult him immediately on his cell phone. Police told the accused he would have to wait until arrival at the police station.
3:40 a.m.	Accused arrived at police station.
3:45 a.m.	Police officer dialled the accused's lawyer of choice's office number (Mr. Mallet) at the accused's request. There was no answer.
3:55 a.m.	Police retrieved the accused's cell phone to obtain Mr. Mallet's personal number. While the phone was being retrieved, further calls to Mr. Mallet's office went unanswered.
4:13 a.m.	Accused was handed his cell phone to obtain Mr. Mallet's personal number.
4:14 a.m.	Police dialled Mr. Mallet's personal number using station phone. There was no answer. Police left a message requesting a return call.
4:16 a.m.	Police made a second attempt to reach Mr. Mallet at his personal number. Accused left a message for Mr. Mallet. Suggesting Mr. Mallet might be abroad, the accused asked to contact a second lawyer of choice, Mr. LeBlanc. The police officer dialled Mr. LeBlanc's office number and an answering message said Mr. LeBlanc's office would be closed for five days.
4:22 a.m.	Accused found another lawyer's number in his cell phone (Mr. Boudreau). Police called Mr. Boudreau's cell phone number and left a message.
4:27 a.m.	Accused dialled Mr. Boudreau's cell phone number from the station phone. There was no answer. Accused left a message asking for a call back.
[redacted]	Police suggested accused speak to a legal aid lawyer. Accused agreed, provided he could speak to a lawyer named Mr. Roy, who he knew well.
4:30 a.m.	Police called legal aid. The legal aid office dispatcher told police that Ms. Landry was the on-call duty counsel. The accused did not know her and refused to speak to her. Police tried unsuccessfully to reach Mr. Roy.
4:33 a.m.	Accused, using his cell phone, tried to call Mr. Roy.
4:34 a.m.	Accused given *Prosper* warning.
4:38 a.m.	Qualified breath technician took charge of accused.
4:45 a.m.	Accused provided first breath sample.

"[T]he case law could not be clearer on the issue of when an accused is entitled to avail himself or herself of his or her right to counsel. The right applies immediately following arrest and reading of constitutional rights, insofar as the circumstances of the case allow."

The accused replied, **"I do not waive it, but what do you want me to do?"** Within four minutes he was then turned over to the qualified technician who took two breath samples. The first sample was taken at 4:45 am.

New Brunswick Provincial Court

The judge found the accused had been provided a reasonable opportunity to consult a lawyer but had not been diligent in exercising his right. Thus, the *Prosper* warning did not matter. He was convicted of operating a motor vehicle while over 80mg%.

New Brunswick Court of Queen's Bench

The appeal judge found the accused's s. 10(b) *Charter* right was breached. Although he too found a *Prosper* warning unnecessary, he held the investigating officer did not provide the accused with a reasonable opportunity to retain and instruct counsel without delay at the time of his arrest. As a consequence, the certificate of analysis was excluded under s. 24(2) and the accused was acquitted.

New Brunswick Court of Appeal

The Crown challenged the finding of a s. 10(b) *Charter* breach. But the Court of Appeal rejected the Crown's arguments. In this case, the Court of Appeal recognized there were two s. 10(b) violations.

s. 10(b) Right to Counsel

Justice LeBlond, delivering the opinion for the Court of Appeal, described the s. 10(b) right as follows:

> ... [T]he case law could not be clearer on the issue of when an accused is entitled to avail himself or herself of his or her right to counsel. The right applies immediately following arrest and reading of constitutional rights, insofar as the circumstances of the case allow. No evidence may be obtained before the right is exercised. The Supreme Court of Canada clearly stated ... that the right requires the police officer to allow the accused to use any available telephone. ....
>
> The reason why the exercise of the right must be allowed as soon as possible is to achieve the overarching purpose of s. 10(b), that of avoiding involuntary incrimination. The purpose is achieved only when the detainee is in a position to receive legal advice. [references omitted, paras. 19-20]

In this case, there were two s. 10(b) *Charter* breaches.

1. The initial refusal by the officer at the time of arrest to permit access to counsel was the first breach. The accused had immediately expressed the desire to contact his lawyer, but ***"the police officer's usual practice ... prevented [the accused] from availing himself of his right to retain and instruct counsel at the scene of his arrest, despite the Supreme Court of Canada's explicit and well-known instructions to that effect, dating back more than thirty-three years,"*** Justice LeBlond said. Although the accused told the officer he wanted to consult his lawyer without delay by using his cell phone, he was not provided any means to exercise that right. He was told he would have to wait until they arrived at the police station. ***"In this case, [the accused] was entitled to use his cell phone to try to contact his lawyer, but the police officer refused to let him do so,"*** said Justice LeBlond. ***"He went so far as to threaten [the***

"In the case at bar, the police officer testified he acted in accordance with his usual practice, but there is no evidence he engaged in conduct he believed was required by law. I cannot conceive that the RCMP, with all its resources and means of communicating with its members, would not have alerted its members about how they should conduct themselves, especially in light of the fact that the expected conduct was established by Canada's highest court more than thirty years ago."

accused] that his cell phone would be seized if he did not leave it in his car."

2. The second breach occurred when the accused was read the *Prosper* warning. The *Prosper* warning is to be given when a detainee, who has asserted a desire to speak to counsel, changes their mind and waives their right to counsel (or does not respond clearly to a police officer). Neither of these situations applied here. ***"[The accused] never waived his right and, moreover, he was completely unaware of the legal import of the Prosper warning,"*** said Justice LaBlond. ***"The warning makes no reference to the attempts made until it was read and simply informs [the accused] that his right under s. 10(b) of the Charter subsists and that he continues to have a reasonable opportunity to contact a lawyer. All [the accused] can be expected to understand from the warning is that the police officer is telling him, at 4:34 a.m., that he still has a reasonable opportunity to exercise his right and that the police officer has to wait until he does so before obtaining, in this case, samples of his breath."***

Furthermore, the two-hour time limit related to the statutory presumption of the BAC level, did not influence the timing of when the accused was turned over to the qualified breath technician, a mere four (4) minutes after receiving the Prosper warning. ***"There were thirty minutes left before the end of the period within which to benefit from the presumption,"*** said Justice LeBland. ***"It is therefore difficult to explain the police officer's decision to so hastily deprive [the accused] of his right, especially since the officer had just told him he was not required to exercise his right within a specified time provided he was reasonably diligent. Certainly, the loss of the presumption could not prevail over [the accused's] right."*** The accused was not permitted to exercise, within a reasonable time, his right to counsel before the qualified technician took charge of him

s. 24(2) Charter

The Court of Appeal went on to uphold the Court of Queen's Bench decision to exclude the certificate of analysis. Although the evidence was reliable and society's interest in an adjudication of this case on its merits favoured the admission of the certificate of analysis, the other two factors in the s. 24(2) analysis favoured exclusion. First, the officer's usual practice – not allowing access to counsel at the place of arrest and waiting for arrival at the police station – was a very serious Charter-infringement.

"In the case at bar, the police officer testified he acted in accordance with his usual practice, but there is no evidence he engaged in conduct he believed was required by law," said LeBlond. ***"I cannot conceive that the RCMP, with all its resources and means of communicating with its members, would not have alerted its members about how they should conduct themselves, especially in light of the fact that the expected conduct was established by Canada's highest court more than thirty years ago."*** Second, the two s. 10(b) breaches undermined the accused's right to counsel and were ***"committed deliberately and egregiously"***.

The Crown's leave to appeal was denied.

Complete case available at www.canlii.org

NO DETENTION UNTIL ALCOHOL DETECTED ON BREATH

R. v. Pawson, 2021 BCCA 22

The accused lost control of his vehicle, swerved into the oncoming lane and off the road, and struck a pedestrian who had just gotten off a bus. Another bus rider immediately ran to the pedestrian, who was lying in a bush, moaning, and in a semiconscious state. Emergency 911 was called, and firefighters, paramedics and police were dispatched to the scene.

At 8:07 p.m. a police officer was dispatched to attend. At 8:12 p.m. she arrived on scene. Firefighters and paramedics were already there. The officer saw a grey vehicle in the ditch area, which she believed had been involved in an accident with the pedestrian. The accused was standing at the front of the vehicle looking at the injured pedestrian. The fire chief pointed out the accused as the driver involved in the accident.

The officer approached the accused and asked him if he was the driver. He said, ***"Yes, I am"*** and gave her his name. The accused was emotional and appeared very concerned about the pedestrian. The officer, concerned about the accused's emotional state and wanting to find out what had happened, asked the accused to follow her to her police vehicle parked a short distance away. Because the accused appeared "fairly shaken up", the officer told the accused he could sit down on the back seat of her vehicle. When he did so, his legs and feet were outside the police vehicle. The officer asked the accused for his driver's licence and used her portable radio to check his name and date of birth.

The accused told the officer he had spent some time on his boat and was driving home when the accident happened. Because of the noise from the firefighters and paramedics, the officer leaned towards the accused to hear him. When she did so — at about 8:14 p.m. — she detected the slight smell of alcohol coming from his breath as he was speaking. When asked whether he had any alcohol that day, the accused replied he had a beer at 5:00 p.m. Suspecting the accused had operated a motor vehicle within the preceding three hours with alcohol in his body, the officer made an ASD demand (under then s. 254(2) *Criminal Code*) at about 8:18 p.m. The accused failed the test and he was arrested at 8:22 p.m. for impaired driving causing bodily harm. He was advised of his *Charter* rights and a breath demand was made. He was taken to the police station where he spoke to a lawyer. Two breath samples were taken resulting in readings of 140mg% and 150mg%.

EVENT GRID	
Time	**Event**
8:07 p.m.	Police dispatched to accident.
8:12 p.m.	Officer arrives on scene of accident. Firefighters and paramedics already at scene.
8:14 p.m.	Officer detects slight smell of alcohol coming from accused's breath. Accused told officer he had a beer at 5:00 pm.
8:18 p.m.	Officer made ASD demand. Accused failed ASD.
8:22 p.m.	Accused arrested for impaired driving causing bodily harm and advised of Charter rights. Breath demand also made.
	Accused driven to police station.
8:56 p.m.	Accused spoke to a lawyer at the police station.
9:10 p.m.	At accused's request, police called his girlfriend to let her know he had been in a collision and was alright.
9:24 p.m.	1st breath sample taken = 140mg%.
9:44 p.m.	2nd breath sample taken = 150mg%

British Columbia Provincial Court

The judge found the accused had not been detained until the officer smelled alcohol on his breath. ***"I do not believe that a reasonable person in [the accused's] position would believe that his right to choose how to interact with [the officer] had been removed when he talked to [the officer]"***, said the judge. ***"I find that [the accused] was not detained when he was seated in the back of the police vehicle, until after the officer smelled alcohol on his breath."*** In so holding, the judge made the following findings:

1. [The officer] did not tell [the accused] to come to her vehicle, she asked him to follow her to her vehicle, and to talk about what happened, and [the accused] followed her there.

2. While at the police vehicle [the officer] did not see any injuries on [the accused], but was concerned about his emotional state, and recognized that he may be in shock from the accident. She asked him if he was okay, and he said he was okay.

3. [The officer] told [the accused] he could sit in the back of the police vehicle, which he did. [The accused] sat sideways in the rear seat with his legs out of the vehicle and feet on the ground. This is some indication to me that [the accused] was not being restrained physically or mentally. The car door remained open throughout the conversation.

4. [The officer] stood in front of [the accused] as he was seated. She leaned in towards him when he told her what he had been doing that day leading up to the incident. [The officer] leaned in so that she could hear [the accused], with her face approximately one foot from [the accused's] face.

5. [The officer] would have moved out of the way if [the accused] got out of the vehicle. [The officer] was not blocking [the accused's] egress, nor was she crowding him, and that [the accused] could have got up and walked away without bumping into [the officer].

6. [The officer] ... believed she detained [the accused] once she read him the ASD demand. She accepted in cross-examination that she would probably have detained [the accused] if he tried to get up and leave after she smelled alcohol on his breath, but before she asked him if he had had anything to drink.

7. The duration of [the officer's] interaction with [the accused] from the time she first approached him to the time she read the ASD demand was approximately five minutes. [The officer] ran checks on [the accused's] identity at 8:14 p.m., just after they arrived to her vehicle. She made the ASD demand at 8:18 p.m. The demand was made after [the accused] said he had one beer at 5:00 p.m., which was after [the officer] had asked him if he had had alcohol to drink that day when she smelled liquor on his breath.

As for the ASD demand, the judge found it was valid. The officer testified she formed a suspicion for the ASD demand on the following basis: (a) her belief the accident had occurred just prior to her being dispatched; (b) the odour of alcohol on the accused's breath; (c) his admission to having had one beer; and (d) her belief he probably had more than one beer. Although the accused's admission to consuming alcohol was lessened by the fact that it had been over three hours earlier, it was only one of the factors that contributed to an objectively reasonable suspicion that he had alcohol in his body. More significant than this admission, in the judge's view, was the unexplained collision with a pedestrian on the side of the road. ***"There were skid marks consistent with very erratic driving,"*** said the judge. ***"They showed the vehicle had swerved across the centre yellow lines of the road, across the oncoming lane, and then off the road and through the gravel to land adjacent to the forested area facing the wrong direction."***

Although the smell of alcohol on the accused's breath was slight, when combined with the unexplained accident and the admission to alcohol consumption, the judge was satisfied there were objectively reasonable grounds for the officer to suspect that the accused had alcohol in his body. Further, the officer believed the accused was the driver of the vehicle that struck the pedestrian based on his admission he was driving home. Thus, she had the requisite grounds to demand an ASD breath sample.

The judge also concluded that the accident occurred at or after 7:43 p.m., within the two-hour window of the taking of the first breath sample at 9:24 p.m. so that the presumption of identity applied. The judge found that the 911 call was placed very shortly after the accident; an ambulance was dispatched at 8:03 p.m. and arrived on scene at 8:08 p.m.; and the ambulance arrived 22 to 25 minutes after the accident. The accused was convicted of causing an accident resulting in bodily harm while operating a motor vehicle with a blood alcohol level over 80mg%.

"[T]he officer who makes the [ASD] demand does not have to believe the driver is impaired or some other crime has been committed."

British Columbia Court of Appeal

The accused argued that the trial judge erred in finding that he was not arbitrarily detained under s. 9 of the *Charter* before the ASD demand was made. In his view, he was detained as soon as the officer approached him to determine the cause of the accident and "placed" him in the back of her vehicle. He submitted that the officer was obligated to immediately advise him of his rights under ss. 10(a) and (b) when she approached him. Further, the accused suggested the trial judge erred in finding that the suspicion required to make an ASD demand existed. Finally, the accused challenged the trial judge's ruling that he was driving within two hours of when the first breathalyzer sample was taken, and that the statutory ***"presumption of identity"*** applied despite the provisions repeal.

Detention

Justice Frankel, speaking for the Court of Appeal, found the trial judge did not err in holding that the accused was not detained before the officer demanded he provide an ASD sample. Citing *R. v. Suberu*, 2009 SCC 33, Justice Frankel noted that the Supreme Court of Canada ***"said that in the absence of physical restraint or a legal obligation to comply with a request to 'wait', the 'analysis must consider whether the officer's conduct in the context of the encounter as a whole would cause a reasonable person in the same situation to conclude that he or she was not free to go and that he or she had to comply with the officer's request.'"*** Here, the trial judge properly assessed the circumstances and determined whether the line between general questioning and detention, which can be difficult to draw in a particular case, had been crossed.

ASD Demand

A legally sound ASD demand has both a subjective and objective aspect. The demanding officer must subjectively have an honest suspicion that the detained driver has alcohol in his or her body and their suspicion must be based on objectively verifiable circumstances. In this case, the officer had the necessary subjective suspicion as found by the trial judge.

As for the whether the officer's suspicion was objectively reasonable, the Court of Appeal also upheld the trial judge's ruling keeping in mind two important considerations. ***"The first is that 'reasonable suspicion deals with possibilities, rather than probabilities',"*** Said Justice Frankel. ***"The second is that the officer who makes the demand does not have to believe the driver is impaired or some other crime has been committed."***

Although the officer did not state she considered the "unexplained" nature of the accident in deciding to make the ASD demand, it was obvious the accident was in her mind when she made the demand as reflected in her testimony. As well, there was an objective basis to suspect the accused had been driving in the preceding three hours as required by s. 254(2).

The accused also contended that the ASD demand was made at 8:18 p.m. and there was no objectively reasonable possibility the accident occurred at or after 5:18 p.m. Although there was no direct evidence as to the exact time of the accident, the 911 call was placed within minutes of the accident occurring. The officer received a dispatch at 8:07 p.m. and arrived on scene at 8:12 p.m. Other first responders were already there. As well, the accident occurred on a busy highway during the summer tourist season and would have been obvious to anyone travelling that highway. ***"In light of this, it strains credulity to accept that [the officer's] belief that the accident occurred just before she arrived on the scene was not objectively reasonable,"*** said Justice Frankel. ***"To accede to [the accused's] argument one would have to accept***

it took more than two and one-half hours after the 9-1-1 call was placed for the police to be dispatched."

Breathalyzer Demand

Under the former s. 258(1)(c) of the *Criminal Code*, the results of the breathalyzer tests were ***"conclusive proof"*** of the blood alcohol level at the time of the offence provided that the first sample was taken not less than two hours after an alleged offence. This is known as the ***"presumption of identity"***. Since the first sample was taken at 9:24 p.m., the Crown had to prove the accident occurred at or after 7:24 p.m.

"The [trial] judge's assessment of the reliability of the various aspects of the evidence and of the weight to be assigned to the evidence were hers to make and are entitled to deference," said Justice Frankel. ***"It cannot be said the judge's findings are 'clearly wrong, unsupported by the evidence or otherwise unreasonable'."*** And the ***"presumption of identity"*** was not repealed when the new impaired driving regime came into force on December 2018. The presumption still applies to transitional cases (like this one that occurred in July 2017).

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

EVENT GRID	
Time	**Event**
1:35 a.m.	Search warrant issued. It could be executed between 2:00 a.m. and 8:59 p.m.
1:06 p.m.	Search warrant execution briefing conducted.
1:43 p.m.	Search Warrant executed. No-knock entry utilized. Accused arrested.
1:50 p.m.	Accused read his s. 10(b) Charter rights. Police told accused they would call his father with a view to contacting a lawyer. The accused was offered access to duty counsel in the meantime.
2:00 p.m.	Search conducted. Police subsequently found one kilogram of cocaine, drug paraphernalia, and $3,695 CAD.
2:08 p.m.	Accused transported to police station.
2:37 p.m.	Accused brought into booking area.
2:39 p.m.	Police called duty counsel.
3:01 p.m.	Duty counsel called back and the accused's wife spoke to duty counsel. Duty counsel told police he would not be able to speak to the accused and asked police to call back in an hour when another lawyer would be available.
3:05 p.m.	Police called duty counsel back and left a message.
3:42 p.m.	Police told the accused duty counsel had not yet called back.
Unknown	The accused asked to speak with a specific lawyer. A call was made but the lawyer's colleague said the lawyer was not available.
4:50 p.m.	Entire search completed.
4:55 p.m.	Police discovered accused had still not yet spoken to a lawyer.
5:00 p.m.	Accused agreed to speak to duty counsel. Duty counsel called and a message was left.
5:15 p.m.	Accused spoke to duty counsel for 10 minutes.
9:32 p.m.	Accused offered duty counsel again after being re-arrested for additional offence.
Additional times taken from *R. v. Pileggi*, 2019 ONSC 2097	

EVIDENCE DESTRUCTION & SAFETY CONCERNS JUSTIFIED NO-KNOCK ENTRY

R. v. Pileggi, 2021 ONCA 4

After obtaining a tele-warrant to search the accused's home based on confidential sources, the police executed it at 1:43 p.m. The affiant knew the accused lived in his house with his wife and two young children. He had no criminal record. The affiant did not know of any firearms in the house. Without knocking, nine police officers forcibly entered the home. At least one, and maybe more, had their gun drawn. Immediately upon entering the house, some of the officers went upstairs. The accused, standing with his hands in the air, and his wife, holding a coffee cup, were found in the master bedroom.

The accused was ordered to kneel on the floor. He was then handcuffed behind his back and advised he was under arrest for possessing oxycodone for the purpose of trafficking. His wife was not handcuffed and was allowed to sit on the bed. Two

officers remained in the bedroom while other officers "cleared" the house, taking about seven minutes to do so. At that point, the accused was advised of his right to counsel. He said that he wished to contact his father with a view to speaking with a lawyer. The officer told the accused that police could call his father to ascertain the name of a lawyer and he was offered duty counsel in the meantime. The accused then spontaneously said that whatever the police found belonged to him, and not his wife.

The arresting officer's handcuffs were swapped out with the transporting officer's handcuffs. The accused was patted down and a bottle containing five oxycodone pills was found in his pocket. While being taken downstairs for transport, the accused was read the search warrant. He said that his wife had nothing to do with it. He was asked whether he wanted to tell police where anything was, but replied "no". He and his wife were then separately transported to the police station. His wife spoke to duty counsel at about 3:00 p.m. while the accused spoke to a lawyer at 5:15 p.m. During the search of the house, the police found a large quantity of oxycodone pills, a kilogram of cocaine, drug paraphernalia, and $3,695 in cash. The accused was charged with possessing cocaine for the purpose of trafficking and possessing property obtained by crime.

Ontario Superior Court of Justice

The affiant testified that it was always part of the plan to use a battering ram to break down the door because drugs can easily be flushed down the toilet. He said about 90% of the drug warrants he had executed involved forced entry but disagreed that police had a blanket policy of effecting a forced entry whenever a search warrant for drugs was executed. The lead officer in the execution of the warrant testified police forcibly entered the home because they were concerned about the loss of evidence. He disagreed that he had a blanket policy of using forced entry in searches involving any drug. The officer who breached the front door also testified. He said, **"there's no hard and fast rule [on] how we do a warrant entry".** But he was unaware of the knock and announce rule.

The judge found that the manner in which the police executed the search warrant did not violate the accused's s. 8 *Charter* rights. The judge relied upon the police evidence that drugs in pill form could be easily flushed down a toilet, especially in a two-story house where there are readily accessible washrooms on both floors. And since police had no idea where in the home the accused might be, he would have quick and ready access to a washroom if entry were to be announced. The judge also accepted police evidence about how weapons are often present at places where they execute search warrants. Just because there may be no information indicating that weapons may be located in the place to be searched, it did not necessarily mean that weapons will not be present.

The decision to handcuff the accused did not violate his right against arbitrary detention under s. 9. The judge concluded that the police acted reasonably in handcuffing the accused, both in his home and en route to the police station. The use of handcuffs was appropriate during the safety check of the house and during transport to the police station.

Finally, the judge held the police did not violate the accused's right to counsel under s. 10(b) in any way. The seven minute delay in providing s. 10(b) rights was reasonable while the police were searching and securing the home. And when the officer posed the question about whether the accused wanted to tell the police where anything was, it was in response to a spontaneous statement made by him, which itself was not prompted by a question. Access to counsel was not provided at the house because private consultation could not be afforded. Finally, the judge held that the police did not intentionally delay the accused's right of access to counsel. The accused effectively waived his right to speak to counsel of choice by agreeing to speak with different counsel. Moreover, had she found any *Charter* breaches, the judge would not have excluded any of the evidence under s. 24(2). The accused was convicted of a possessing cocaine for the purpose of trafficking.

"Public safety (including the safety of police officers), as well as preventing the destruction of evidence, may relieve the police of the 'knock and announce' requirement."

Ontario Court of Appeal

The accused alleged that his rights under s. 8 (unreasonable search), s. 9 (arbitrary detention) and s. 10(b) (right to counsel) of the *Charter* had all been breached.

Unreasonable Search - No Knock Entry

The accused argued the manner in which the police carried out the search of his home infringed s. 8 of the *Charter* because they employed a forced entry, which was more force than was reasonably necessary. In his view, the police were acting under a blanket policy not to knock and announce when executing drug warrants.

In analyzing the reasonableness of the police entry in this case, Justice Trotter, delivering the Court of Appeal's decision, stated:

> The police must exercise restraint when executing search warrants. This is rooted in statute, the common law, and Charter jurisprudence.
>
> Section 12(b) of the CDSA authorizes the police to "use as much force as is necessary in the circumstances" when executing a search warrant issued under s. 11. Of more general application, s. 25(1) of the Criminal Code, R.S.C. 1985, c. C-46 uses the same language.
>
> Police officers executing search warrants must "knock and announce" their presence at the place to be searched. ... [I]in the ordinary case, the police should give: "(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 a lawful reason for entry".
>
> However, these well-established criteria are not absolute. Public safety (including the safety of police officers), as well as preventing the destruction of evidence, may relieve the police of the "knock and announce" requirement. [references omitted, paras. 20-23]

In deciding to depart from and dispense with the knocking and announcing, the following requirements must be met:

- Where the police depart from the knock and announce rule, they must explain why they thought it was necessary to do so.
- The Crown must lay an evidentiary foundation that the police had reasonable grounds to be concerned about the possibility of harm to themselves or the occupants, or about the destruction of evidence.
- The greater the departure by the police from the knock and announce rule, the heavier the onus to justify what they did.
- The evidence to justify such behaviour must be apparent in the record and available to the police at the time they acted. In other words, ex post facto justifications will not suffice. [para. 27]

"In applying these factors, courts must be alive to the realities of policing," said Justice Trotter. ***"The police are afforded a certain amount of latitude when they decide to enter residential premises, based on information that is reasonably available to them."***

The Court of Appeal adopted the trial judge's analysis on the destruction of evidence justification. ***"The police had reasonable grounds to conclude that an unannounced and forced entry was required to prevent the destruction of evidence,"*** said Justice Trotter. ***"Given the size and layout of the house, as well as the nature of the drugs in question, there was a real likelihood that***

"The police are afforded a certain amount of latitude when they decide to enter residential premises, based on information that is reasonably available to them."

the [accused] would be able to destroy the evidence quickly and with ease."

The Court of Appeal also agreed with the trial judge that safety concerns justified a forced entry without knocking and announcing rule. Police evidence showed that weapons are often discovered in residences when executing drug warrants. "***Although there was no information available to the officers suggesting that there were firearms located at the [accused's] residence, the allegations involved serious drug charges,"*** said Justice Trotter. ***"The all too typical toxic combination of drugs and guns is well known to the police and the courts. Police must be entitled to some degree to rely upon their collective experience when approaching situations that may endanger their lives."***

Rather than the police simply acting under a blanket policy to conduct forced entries when executing search warrants for drugs, they made an independent assessment of the circumstances they faced:

> The fact that the police act in the same way in the vast majority of cases presenting similar circumstances does not equate with the existence of a blanket policy. There is no impropriety in the police drawing on their collective experience when performing the same investigative task, so long as they remain open to performing their duties differently should circumstances permit.
>
> In this case, there was evidence that the officers made an individualized assessment about the appropriate manner of search. At the briefing before executing the search warrant, they decided to use a battering ram due to concerns about the potential loss of evidence. ... [T]hese concerns were pronounced because of contextual considerations: the nature of the drugs (oxycodone pills that could be flushed) and the layout of the house (two levels with the potential for multiple washrooms). [paras. 36-37]

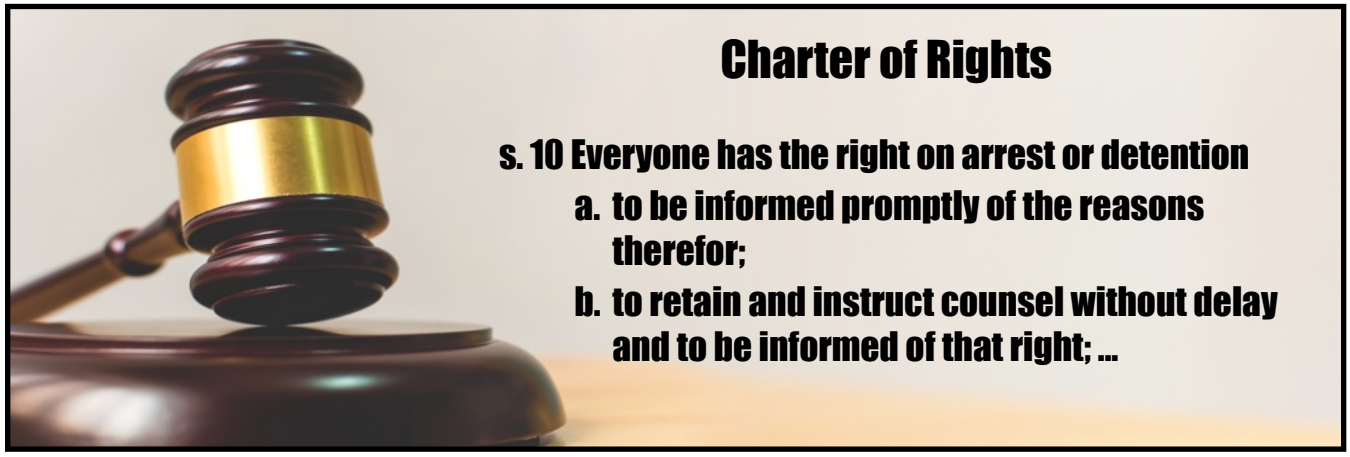
The trial judge's conclusion that the officers' departure from the "knock and announce" standard was justified was amply supported by the evidence.

Arbitrary Detention - Handcuffing

The accused submitted that his handcuffing without justification, both in his home and en route to the police station, rendered his detention arbitrary. In his view, he presented no safety concerns.

Although the execution of a search warrant does not automatically entitle the police to handcuff those located in the place to be searched, it was not unreasonable to handcuff the accused in his home and in the police car:

> ... All of the evidence points to the unknown variables the police face when they enter a home to execute a search warrant, particularly as it relates to the presence of others in the place to be searched (an aspect of [the arresting officer's] testimony that I return to below). In this case, the evidence supports the conclusion that the situation was not safe, or completely under control, until the house was cleared.
>
> The police were also justified in using handcuffs once they cleared the house. I disagree with the [accused's] submission that his compliance to that point required the removal of the handcuffs. There was no guarantee that he would continue to cooperate with the police.
>
> The [accused] submits that, because the police did not conduct a pat-down search on him before handcuffing him, they did not reasonably believe that he posed any safety concerns. I do not find this argument persuasive. ... [H]ad the police conducted a pat-down search and found nothing, this would not necessarily have precluded them from lawfully placing the [accused] in handcuffs. As it turned out, the pre-transport search of the [accused] revealed a bottle of oxycodone in his front pocket.
>
> It is important to note that the police did not handcuff the [accused] solely for the purpose of facilitating the safe execution of the search warrant; he had also been placed under arrest for a serious criminal offence. ... [A]n arrest is a "continuing act" that involves taking the person into custody and "by action or words restraining him from moving anywhere beyond



> the arrester's control", which continues until a detainee is either released or remanded into custody .... This factor contributed to the reasonableness of the decision to handcuff the [accused], both at his home and during transport. During that time, the [accused] was an arrestee and the police were entitled to restrain him from moving anywhere beyond their control, both for his own safety and the safety of the officers. [references omitted, paras. 48-51]

And just because the police allowed the accused's wife to sit on the bed, without handcuffs, did not render the police conduct in handcuffing him arbitrary. ***"In my view, it suggests the opposite,"*** said Justice Trotter. ***"The police chose to handcuff the person at the centre of their investigation. That was the [accused]; not his wife. Again, the lack of evidence on this point undermines the [accused's] contention."*** Nor did the swapping of the handcuffs suggest they were unnecessary in the first place, or that the officers should have reassessed the situation. The exchange of handcuffs had nothing to do with the accused's perceived risk.

Right to Counsel

The accused contended his s. 10(b) right to counsel had been violated in four ways:

1. the police failed to fulfill their informational duties by not advising him of his s. 10(b) rights while the house was being cleared;
2. his rights were breached by the delay in the implementational component by not allowing him to contact counsel from his home;
3. his rights were breached when he was questioned before he could consult counsel; and
4. the police failed to facilitate his counsel of choice.

Right to Counsel - Informational Delay

The Court of Appeal upheld the trial judge's finding that the police did not infringe s. 10(b) by their brief seven minute delay in advising him of the informational component of the right to counsel after arrest. The arresting officer testified it was not safe to advise the accused of his right to counsel because the bedroom had not been cleared and police had no idea whether there were any other people in the house. ***"Public and officer safety may impact both the informational and implementational obligations in s. 10(b),"*** said Justice Trotter. ***"On the facts of this case, concerns for officer safety justified a brief delay in delivering the informational component of s. 10(b). Once the officers secured the premises, they immediately turned their minds to the [accused]. The delay was a mere seven minutes. This was reasonable in the circumstances."***

Right to Counsel - Duty to Hold Off

When the officer asked the accused whether he wanted to tell police where anything was, the officer failed in his duty to hold off questioning

"Once a detainee has been informed of his rights under s. 10(b) of the Charter, and that person indicates that they wish to retain counsel, the police have a 'duty to hold off questioning or otherwise attempting to elicit evidence from the detainee. This duty also prevents the police from interacting with an accused person, short of questioning, in a manner that that triggers a response from the accused – i.e., something that is a "functional equivalent" of an interrogation."

until the accused had consulted counsel. Justice Trotter stated:

> ... It is true that the [accused] made a spontaneous statement, one that was indirectly incriminating. The statement revealed knowledge of illegal items in his home, if not control over those items. Since the [accused] had just been told that he was under arrest for possession of oxycodone for the purpose of trafficking, one could infer that he was referring to drugs.
>
> It is debatable whether [the officer's] question was in "direct response" to the [accused's] utterance. It certainly came immediately after the [accused's] assertion. But the [accused's] assertion did not call for a "response". It did not entitle the officer to seek further incriminating evidence from the [accused].
>
> Once a detainee has been informed of his rights under s. 10(b) of the Charter, and that person indicates that they wish to retain counsel, the police have a "duty to hold off questioning or otherwise attempting to elicit evidence from the detainee. This duty also prevents the police from interacting with an accused person, short of questioning, in a manner that that triggers a response from the accused – i.e., something that is a "functional equivalent" of an interrogation.
>
> I need not decide whether reading the contents of the search warrant to the [accused] was an attempt to elicit evidence. Suffice it to say, [the officer] entered dangerous territory in doing so. The law does not require the police to explain the contents of a warrant to occupants when a search warrant is executed. Rather, the police must have the warrant with them "where it is feasible to do so, and … produce it when requested to do so": Criminal Code, s. 29(1). However, by asking the [accused] if he would like to tell police where anything was, [the officer] was seeking incriminating evidence. At the time, he did not even know whether the [accused] had been advised of his right to counsel. He should have asked the officer who accompanied the [accused] downstairs. This situation called for caution, not hubris. [references omitted, paras. 69-72]

Even though the accused declined to answer the question and it was unsuccessful in eliciting any evidence, ***"the breach arose because the officer attempted to elicit incriminating information in the first place"***, said Justice Trotter. ***"In other words, it was the purpose of his question, and not the response, that violated the duty to hold off. The fact that the question did not yield any inculpatory evidence does not neutralize the Charter breach."***

Right to Counsel - Facilitation On Scene

There was no s. 10(b) breach when the police failed to afford the accused the opportunity to consult counsel while he was still in his house and before being transported to the police station. A police officer testified that, in his experience, he always waited to facilitate access to counsel until the accused person was transported to the police station ***"where they can have a private conversation, where we can maintain custody of them."*** Providing a private conversation at the house would not have been feasible. The house was being searched and the accused was handcuffed. ***"In these circumstances, it is difficult to fathom how the police could have accommodated a private conversation at the [accused's] home,"*** said Justice Trotter. "***Consultation in private is a vital component of the s. 10(b) right. The [accused's] right to consult counsel in private would have been compromised by attempting to facilitate contact at the house while a search was underway."***

Right to Counsel - Implementational Duty/Counsel of Choice

The police failed in their implementational duties by the lengthy delay in facilitating the accused's contact with counsel and by failing to arrange contact with his counsel of choice. At 1:50 p.m. the accused was offered access to duty counsel before being transported to the police station. Then, at 4:55 p.m. it was discovered that he had still not spoken to a lawyer. He accepted an offer to speak to duty counsel and had a private conversation with a lawyer at 5:15 p.m.

The officer who agreed to speak with the accused's father and facilitate contact with a private lawyer did not contact the father. Instead, he assumed that the transporting officer would follow through and make the inquiry. ***"The failure to follow through on the undertaking to contact the [accused's] father about a lawyer, combined with the overall delay in facilitating contact with any lawyer, infringed s. 10(b) of the Charter,"*** said Justice Trotter. ***"The police had undertaken the role of ascertaining the name of a lawyer from the [accused's] father. They failed to do so. ... The [accused] reasonably relied on the undertaking of the police to facilitate his access to a private lawyer, and when this did not happen, he agreed to duty counsel. Through no lack of diligence on his part, this did not happen until 5:15 p.m., more than three hours after his arrest."***

s. 24(2) - Exclusion of Evidence

Despite the two s. 10(b) *Charter* breaches, which were temporally and contextually connected with the discovery of the drugs at his residence, the Court of Appeal would not have excluded the evidence under s. 24(2).

The breach of the duty to hold off by asking the question at the home was ***"fleeting and inconsequential"***; no further evidence was obtained as a result of the question. The breach involving the failure to properly implement the accused's right to counsel was more serious, but unintentional. These breaches, in combination, favoured exclusion. However, the impact of the breaches on the accused's Charter-protected interests did not favour exclusion. The failure to hold off had minimal impact, while the impact of the the three-hour delay and denial of counsel of choice was not significant. Finally, the evidence was reliable and its admission would enhance the truth-seeking function of the trial. The admission of the evidence discovered during the search would not bring the administration of justice into disrepute. The evidence was admissible.

The accused's appeal was dismissed.

Complete case available at www.ontariocourts.on.ca

VIDEO OF ARRESTEE USING TOILET UNREASONABLE: STAY APPROPRIATE

R. v. Paterson, 2021 SKCA 13

A police officer arrested the accused for impaired care or control after finding her slumped over in the driver's seat of a car. She had trouble focusing and smelled of alcohol. When she was out of the vehicle, the accused had difficulty walking. She was transported to the police station and placed in a cell, which was monitored by a closed circuit television video (CCTV) camera.

The CCTV captured nearly all of the cell area, including the toilet area, and could be viewed on a monitor in the booking area of the station. Police officers and other detention staff who might be in the area could view the monitor. No particular member of the detention staff had the job of actively monitoring the screens displaying the video, but the staff present did have a general obligation to monitor the screens at all times and had the ability to do so. The video was in colour and equipped with sound, which assisted the detention staff in identifying whether a detainee was yelling or in distress.

While in the cell, the accused indicated that she needed to go to the bathroom. She was unable to do so by herself and was assisted by the two female

officers who had arrested her. She fell down twice when she first attempted to use the toilet. Eventually, the officers had to physically support her as she got on and off the toilet. No steps were taken by the officers to shield the accused from the camera in her cell. And the accused made no attempt to cover herself when she was standing or when she was reaching for toilet paper. When she rose with the assistance of the officers, the accused's pants were lowered to above her knees and she was captured on video naked from about her navel to about her knees for a couple of seconds.

The accused was charged with having the care or control of a motor vehicle when her ability to operate it was impaired.

Saskatchewan Provincial Court

The judge found the accused's arrest proper, and the presence and assistance of the police officers in the cell while she used the washroom appropriate. But the video recording of her going to the toilet was a s. 8 *Charter* breach. Capturing the accused on video using the toilet amounted to a seizure. Although there was a need for some surveillance of persons in custody, the accused still had a reasonable expectation of privacy, although reduced, when using the cell toilet.

The judge concluded that no thought had been given to the accused's bathroom activity being video recorded. The judge assumed this was routine practice for the treatment of detained individuals in police cells. It was not an isolated event. In the judge's view, police forces in Saskatchewan had notice that video recording an accused's toilet activities breached s. 8 because of an earlier court decision (*R. v. Wildfong*, 2015 SKPC 55).

The video recording was a serious invasion of the accused's privacy and personal integrity. The impaired driving charge was stayed under s. 24(1) of the *Charter* ***"to ensure the state misconduct in videotaping persons using toilets while in detention does not continue."***

Saskatchewan Court of Queen's Bench

The Crown appealed the trial judge's decision arguing that it was an error to find a s. 8 violation. The Crown submitted that there is a low expectation of privacy for a person being detained and the intrusion was not unreasonable in the circumstances.

The appeal judge upheld the trial judge's analysis and conclusion that there was a s. 8 breach:

> ... [U]sing a toilet is a deeply private activity, and although it would be unreasonable for a detainee to expect no video surveillance while in custody, it is not unreasonable for the [accused] to expect privacy while using the toilet. Additionally, ... [the accused] was using the toilet while sitting down and her genitals were fully exposed to the camera. Courts have established that respecting the privacy of detainees using the toilet can easily be accomplished either through technological fixes or by providing privacy shrouds to detainees. Female officers were physically present when [the accused] used the toilet for the purpose of assisting her, but there was no evidence that the officers gave any thought to the protection of the [accused's] privacy while she used the toilet despite knowing that the area was under video surveillance. No covering was provided to [the accused] and the camera was not temporarily disabled. This evidence is reasonably capable of upholding [the trial judge's] finding that the [accused']s s. 8 rights were breached. [R. v. Paterson, 2019 SKQB 305, at para. 25]

However, the appeal judge ruled a stay of proceedings was not an appropriate remedy. In his view, the trial judge mistakenly presumed that the thoughtlessness regarding privacy rights was ***"routine practice for the treatment of detained individuals … [and] not an isolated incident"***. But there was no evidence to support that the surveillance of detainees using the toilet without privacy protection was systemic. The trial judge's decision to enter a stay was for a ***"punitive purpose"***. The Crown's appeal was allowed, the stay of proceedings was vacated and a conviction was entered.

Saskatchewan Court of Appeal

The accused appealed the vacating of the stay of proceedings arguing, in part, that the trial judge correctly found the *Wildfong* decision ought to have been known to the police service so as to cause it to address its video surveillance practices. Furthermore, the accused contended the stay of proceedings was appropriate.

Unreasonable Search

The Crown first suggested that the lower courts incorrectly found that the accused had a reasonable expectation of privacy such that her s. 8 *Charter* rights had been violated. But Justice Ottenbreit, authoring the Court of Appeal's opinion, rejected the Crown's submission. He found ***"the analysis conducted by the appeal judge on this issue [was] compelling and his conclusion [was] correct."***

Police Should Have Known About Charter Breach

The accused contended that, at the time she was detained, almost four years had passed since the *Wildfong* decision had been issued. By that time, it should have been apparent to the police service that its practice of surveilling detainees using the toilet was a *Charter* violation. The Crown, on the other hand, suggested that the *Wildfong* decision was limited because it was a single Provincial Court decision from a different part of the province directed at a different police service.

Justice Ottenbreit opined that the *Wildfong* case ***"should have alerted the [police service] to the issue of surveilling detainees going to the bathroom."*** And there was no evidence that the police service had made any effort to address the issue of privacy raised in the *Wildfong* case. Justice Ottenbreit stated:

> In the absence of evidence to the contrary, the trial judge concluded that the failure of police forces in Saskatchewan to change their practices following Wildfong and the several decisions dealing with the same issue in Ontario reflected a lack of diligence. This was a reasonable inference considering four years had passed since Wildfong. In the circumstances, she appropriately noted that once the issue was raised, it should have been apparent to the persons responsible for police policies that changes needed to be made and that video recording persons using the washroom could constitute a serious invasion of their privacy and personal integrity.
>
> The appeal judge was wrong to draw the distinction that Wildfong was decided in Saskatoon and not Regina and involved another police force. Such distinctions are neither here nor there. Decisions of the trial courts have the same significance throughout the province. Nor is the fact identified by the appeal judge that this Court had not ruled on the privacy issue involved determinative. The absence of a ruling by this Court on any issue does not necessarily mean that police forces need not address legitimate issues identified by the trial courts. The question of whether they must do so depends on the circumstances including, but not limited to: the nature of the issue that has been decided; the level and number of courts that have addressed the issue; whether the issue has been fully argued; the extent to which the law could reasonably be characterized as unsettled; and the nature, cost and ability to carry out remedial action that would respond to the court's decision. [paras. 48-49]

Stay of Proceedings

The Court of Appeal concluded that the trial judge did not err in entering a stay of proceedings. She did not enter a stay for a ***"punitive purpose"***, but considered a number of factors in determining that a stay was necessary. The *Wildfong* decision was only one consideration among others, including the nature of the charge and other court decisions. She issued the stay not to punish the police, but for a ***"prospective"*** reason - to ensure that police misconduct in video recording persons using the toilet while in detention did not continue.

Moreover, the trial judge properly inferred that the surveillance of detainees using the toilet was

systemic or that no thought was given by the police service to a detainee's privacy rights:

> [The evidence before the trial judge] was that the video monitoring system had been in place for eight to ten years, that every cell had a camera and that each camera recorded the entire cell in which it was placed and was recording at all times. The evidence was that the video from the cameras was fed to monitors. All of that looks very much like a system of continuous surveillance. Additionally, the trial judge had evidence that the officers helping [the accused] were aware of the video surveillance when [the accused] was using the toilet but that they made no effort to take extra measures to protect her privacy when doing so.
>
> ... [T]he Crown failed to call any evidence about the nature and extent of the video monitoring that was taking place when [the accused] was placed into the cell or the length of time it had been in existence. There was also no evidence regarding what steps, if any, officers were instructed to take to afford detainees some privacy when using the toilet and what [the police service] policies regarding the issue were in place. On this latter point, all the trial judge had to consider was the behaviour of the police officers while assisting [the accused].
>
> In the absence of any such evidence before her that could address the foregoing issues, the trial judge was entitled to reasonably infer there had been a video system in place for a long time that captured detainees going to the toilet and, that being the case, the behaviour of the officer in not providing extra privacy to [the accused] was routine. ...[paras. 58]

Justice Ottenbreit ***"found that it was correct to conclude in all the circumstances that, based on the evidence before the trial judge, the [police service] had failed to recognize the issues in Wildfong and done nothing about it in four years."*** The trial judge made no error in imposing a stay of proceedings.

The accused's appeal was allowed and the stay of proceedings reinstated.

Complete case available at www.canlii.org

POTENTIAL INNOCENT EXPLANATION DOES NOT PRECLUDE RGB FINDING

R. v. Tran, 2021 ABCA 58

The police received information from a confidential informer that the accused was using his Toyota Tundra to traffic cocaine. The accused had a criminal record and the police started an investigation, which included six days of surveillance. The affiant, a nine year member assigned to the Drug and Gang Enforcement Unit, believed the accused was involved in eight separate transactions. The affiant prepared an Information to Obtain (ITO) and a search warrant was issued to search two dwellings (the accused's home and a condo believed to be his stash pad) and his Toyota Tundra. The following day, the police arrested the accused. He was told he would not be permitted to contact a lawyer until the searches of the two dwellings was complete.

When the warrant was executed, police uncovered multiple kilograms of drugs, drug trafficking paraphernalia, cell phones, body armour, and $60,000 at the properties. The drugs seized included over 3.5 kilograms of methamphetamine, 5 kilograms of cocaine, 398.4 grams of heroin, and 137 kilograms of phenacetin, a drug used to convert soft cocaine to crack cocaine. Inside the Tundra, police located a sophisticated electronically operated hidden compartment.

The accused spoke to counsel one hour and 12 minutes after his arrest. This was also 23 minutes after he arrived at the police station, 13 minutes of which involved waiting to be placed in the phone room following a secondary frisk search. The accused was subsequently charged with 10 offences under the *Controlled Drugs and Substances Act*, the *Criminal Code* and the *Body Armour Control Act*.

"While credible and reliable evidence must support more than mere suspicion that evidence will be found, it is not necessary to prove on a balance of probabilities that evidence will in fact be found through the proposed searches."

Alberta Provincial Court

The accused argued that the ITO did not justify a search warrant for the residential properties nor his vehicle (s. 8 *Charter*). He also submitted that reasonable grounds did not exist for his arrest (s. 9 *Charter*) and that, upon his arrest, he was subjected to unreasonable delay in accessing counsel (s. 10(b) *Charter*).

The judge rejected the accused's assertions. First, there were sufficient grounds to justify the warrant. Although the informer's description of criminal activity was *"bare bones"* – the accused dealt in cocaine and used a dark coloured Toyota Tundra to supply it – the police conducted independent investigation, including:

- The accused listed the house (registered in his parents' names) as his mailing address and had paid utilities for the property since 2006;
- The accused was the sole shareholder and director of a numbered company that owned the Toyota Tundra;
- The accused had the following criminal record:
  - ➡ 2003 – possession of a controlled substance (s 4(1) *CDSA*), and
  - ➡ 2010 – possession of loaded, prohibited or restricted firearm (s 95 *CC*) and possession of cocaine for the purpose of trafficking (s 5(2) of *CDSA*). He was sentenced to six years' imprisonment and released on full parole in June 2013. He had also been charged with possessing cocaine for the purpose of trafficking in 2008 but that charge was dropped as part of a negotiated plea.

The judge also found the six days of surveillance led the affiant to believe that the accused engaged in eight separate drug transactions and used the condo as a *"stash pad."* All but one of these transactions led the judge to conclude, when viewed in totality and through the lens of the affiant's training and experience, that it was objectively reasonable to believe drug transactions had occurred.

As for the arrest, it too was lawful. The arresting officer relied on the contents of the ITO, plus his knowledge of a later occurring transaction. The arresting officer's subjective belief of reasonable grounds to arrest was objectively reasonable.

The accused was convicted of possessing cocaine, methamphetamine, and heroin for the purposes of trafficking, producing cocaine, possessing ammunition while prohibited, and possessing body armour while banned. He was sentenced to nine years' imprisonment, less 48 days' credit.

Alberta Court of Appeal

The accused maintained that his *Charter* rights under ss. 8, 9 and 10(b) had been breached and the trial judge had erred in holding otherwise. He again challenged the sufficiency of the ITO, the lawfulness of his arrest and the delay in providing him access to counsel.

The Search - ITO

The Court of Appeal summarized the applicable test for a *Charter* compliant search as follows:

> … [W]hether reasonable grounds existed, established upon oath, to believe that an offence has been committed and that there is evidence to be found at the place of a proposed search. While credible and reliable evidence must support more than mere suspicion that evidence will be found, it is not necessary to prove on a balance of probabilities that evidence will in fact be found through the proposed searches. [para. 19]

"Mere identification of a possible innocent explanation to set aside a warrant would set a standard much higher than reasonable grounds. Further, even if a single item of evidence might be conducive to an innocent explanation, or be otherwise deficient, this will not impugn the decision to issue the warrant."

The accused argued two reasons why the ITO was insufficient. First, he suggested the trial judge failed to give any consideration to the evidence in the ITO that he operated reputable siding and nail/spa businesses and that the encounters thought to be drug transactions could have been legitimate business dealings. Since no drugs were actually observed during the transactions, they were equivocal and open to innocent explanation. Second, he submitted that the trial judge erred in failing to recognize a lack of evidence regarding the affiant's training, experience or expertise that could support the opinions proffered in the ITO.

Innocent Explanation

The Court of Appeal disagreed with the accused that, because the surveillance evidence was equivocal and open to innocent explanation, the totality of the circumstances rose only to mere suspicion of criminal activity. The trial judge was aware no hand to hand drug transactions were observed, and she considered and rejected the alternative explanation of legitimate business activities:

> Even if this Court lowered its collective eyebrow and assumed, for the sake of discussion, that the transactions observed to have taken place in the front seat of [the accused's] vehicle were legitimate business dealings, the fact remains that it is not enough to simply articulate an alternative innocent explanation. As the trial judge correctly pointed out, the presence of potential innocent explanations for the observed conduct does not preclude an officer from having reasonable grounds to believe the observed transactions were criminal in nature. …
>
> Mere identification of a possible innocent explanation to set aside a warrant would set a standard much higher than reasonable grounds. Further, even if a single item of evidence might be conducive to an innocent explanation, or be otherwise deficient, this will not impugn the decision to issue the warrant. As this Court has repeatedly stated, the information in the ITO must be read in its entirety and in context. …
>
> It is worth repeating. The "overall picture" in this instance is not whether a prima facie case had been made out against [the accused] nor is it his ultimate guilt or innocence. The question is simply whether reasonable grounds existed to believe that evidence would be located. Those grounds existed here.
>
> [The affiant] deposed that the information from the CI was corroborated. [The accused] was observed multiple times in what was believed to be drug transactions. He was seen leaving his residence in his Tundra vehicle, conducting activity thought to be drug transactions and later returning to his residence. He was observed accessing a "stash pad" that he did not own. Of the three occasions he attended at this location, he was once seen leaving with a duffle bag. Another time, he left with a "lumpy and heavily-weighted" bag. He was further observed engaging in "heat check" driving, to determine if he was being followed. The totality of this information, together with [the accused's] related criminal record and prior use of a "stash pad", all supported [the affiant's] objectively reasonable belief, that in turn justified the issuance of the warrant. [references omitted, paras. 24-27]

"The 'overall picture' in this instance is not whether a prima facie case had been made out against [the accused] nor is it his ultimate guilt or innocence. The question is simply whether reasonable grounds existed to believe that evidence would be located."

"We reject the suggestion that an affiant to an ITO must provide a detailed curriculum vitae of his or her expertise akin to an expert statement of qualification. This degree of detail is unnecessary ..."

Inadequate Training & Experience

The accused argued that there was a lack of detailed evidence in the ITO regarding the affiant's training, experience, and expertise to support the opinions he proffered. The ITO, he suggested, only outlined in a general sense the affiant's experience without offering any details of his involvement with the Drug and Gang Enforcement Unit. ***"We reject the suggestion that an affiant to an ITO must provide a detailed curriculum vitae of his or her expertise akin to an expert statement of qualification,"*** said the Court of Appeal. ***"This degree of detail is unnecessary and, in any event, [the accused] had the opportunity to challenge [the affiant's] experience and expertise in the voir dire, but chose not to. Nor did he rely on [the affiant's] purported limited experience as a basis to challenge the ITO."*** Moreover, ***"regardless of personal experience, the combined effect of all the evidence amply supported the trial judge's conclusion that [the affiant's] subjective belief was objectively reasonable."***

The Arrest

As for the arrest, the Court of Appeal upheld the trial judge's finding of legality. The grounds in support of the search warrant and the arrest mostly overlapped. The arresting officer's decision was ***"generally based on the grounds set out in the ITO, plus his knowledge of a later occurring transaction."*** These circumstances sufficiently supported the trial judge's finding of reasonable grounds for arrest.

s. 10(b) Right to Counsel

The trial judge properly concluded that there was no breach of the accused's s. 10(b) right to counsel:

> Police immediately provided [the accused] with notice of his s 10(b) rights upon his arrest outside of his home. He was provided with an opportunity to speak to counsel 13 minutes following his frisk search at the police station. The frisk search took place 10 minutes after his arrival at headquarters. During that initial 10 minutes, police appear to have been engaged in routine administrative or processing work. Once "settled," [the accused] was placed on a bench while the supervising officer awaited approval from [the arresting officer] to put [the accused] inside the phone room. This waiting time spanned the aforementioned 13 minutes.
>
> The trial judge determined that the moment his frisk search was completed was the earliest possible time when he could have reasonably contacted a lawyer. It is this 13-minute window which was the focus of her decision. She concluded that the "minimal delay between the point when it was practically possible" to facilitate access to counsel and in fact allowing him to do so did not amount to a breach.
>
> Although some version of a roadside right to counsel argument was raised at trial, [the accused] has expanded on this claim beyond any conceivable limit in the course of the present appeal. There is simply no evidentiary foundation to evaluate whose phone at the scene may have been available for use. The record also does not allow for the drawing of any inferences with respect to whether [the accused's] privacy rights could have reasonably been protected at the scene.
>
> Inherent in the trial judge's decision is a rejection of any suggestion of a reasonable opportunity to contact counsel at [the accused's] earlier preferred timeframe. She dismissed any suggestion of bad faith or reckless disregard for Charter compliance. The fact [the accused] disagrees with this conclusion does not entitle him to his desired relief on appeal. ... [references omitted, paras. 34-37]

The accused's appeal was dismissed.

Complete case available at www.canlii.org

LOGBOOK SEARCH NOT A RUSE: COCAINE ADMISSIBLE

R. v. A.B., 2021 BCCA 20

A police officer stopped the accused, the operator of a commercial tractor-trailer unit, for erratic driving. The officer asked the accused to produce his logbook, licence and fuel receipts as required under BC's *Motor Vehicle Act* (*MVA*). The logbook was produced, but there were no entries within the previous four days. This was an offence under BC's *MVA Regulations*.

The officer told the accused that he was going to be placed out of service for a minimum of eight hours and possibly up to 72 hours. He asked the officer if he could drive the truck a few kilometers up the road to a parking lot at a motel. At the parking lot, the officer conducted a search of the vehicle. He was aware that evidence of log books might be concealed in the toolbox area, which was accessible in two ways: (1) from the exterior of the truck or (2) by lifting the bed in the sleeping birth of the truck and looking down on the toolbox.

When he lifted the bed, the officer saw a duffle bag partially open with a brick of cocaine in it. Two other similar-sized bricks of cocaine weighing slightly more that one kilogram each were also found. The officer did not search the bed, the bedding, or clothing. The accused was arrested for possessing drugs for the purpose of trafficking.

British Columbia Supreme Court

The officer testified he was aware that the accused had an expectation of privacy with respect to the bed and the closet in the tractor unit. The judge reviewed s. 239 of BC's *MVA*, s. 37.19.02(1) *MVAR*, as well as the definition of *"sleeper berth"* found in Schedule 1 *MVAR*.

"I am also satisfied that [the officer] was entitled to search the toolbox," said the judge. ***"It was not part of the sleeper berth. The mere fact that [the accused] may have stored some of his personal items in the toolbox does not change the character of that area to become part of the sleeper berth. It is apparent from looking at the contents of the toolbox that the items stored in it were to be used for the operation and maintenance of the truck."***

The judge accepted the officer's evidence that he was searching for the missing logbooks when he searched the truck. The search was authorized by statute and was carried out lawfully. The cocaine was admitted as evidence and the accused was convicted of possessing cocaine for the purpose of trafficking.

British Columbia Court of Appeal

The accused argued, in part, that the warrantless search that uncovered the cocaine exceeded the officer's

authority, was unlawful and unreasonable, and therefore breached s. 8 of the *Charter*. The accused suggested that he had a protected expectation of privacy in the sleeping compartment of his commercial truck. In his view, the officer stepped out of bounds when he searched the sleeping compartment of the truck and lifted up the bed. Moreover, when the officer was conducting his search, the intended purpose of the stop had already been satisfied. Thus, the officer no longer had the authority to engage in a further search of the vehicle after he had determined that the accused was non-compliant and had decided to issue him a violation ticket. Consequently, the accused contended that the evidence out to have been excluded under s. 24(2) .

The Search

Under s. 239(1) MVA, *"a peace officer may, without a warrant, search a business vehicle on a highway to determine whether this Act and the regulations are being complied with in the operation of that business vehicle, and for that purpose may require the driver of the business vehicle to stop the business vehicle and permit the search to be made."*

Even though the officer was presented with incomplete logbooks and had decided to issue a ticket, this did not make a search for missing logbooks unnecessary. Citing *R. v. Nolet*, 2010 SCC 4, Justice Hunter, authoring the Court of Appeal decision, opined that s. 239 *MVA* authorized the officer to conduct the search.

Further, the officer was not using the *MVA* as a ruse to uncover drugs or guns because the accused had a history of criminal activity and had admitted his failure to comply with the logbook regulations. Here, the trial judge accepted the officer's evidence that he was searching the toolbox to look for logbooks.

The Court of Appeal also rejected the accused's assertion that the accused's expectation of privacy in the sleeping compartment of the truck was violated when the officer accessed the toolbox by lifting the sleeping berth from within the cab of the truck, ***"The search of the toolbox, located below the sleeping berth, was not, without more, a violation of the [accused's] right to be secure from unreasonable search or seizure,"*** said Justice Hunter. ***"The toolbox where the drugs were located was not part of the sleeper berth such that the search of the toolbox can be said to have been in violation of s. 37.19.02(1) of the Regulations."***

Nor was entry to the area of the sleeper berth itself contrary to s. 37.19.02(1), thereby rendering the subsequent search illegal:

> The implication of this argument is that the regulation limits the scope of the general statutory authority in s. 239 of the MVA to "search a business vehicle on a highway to determine whether this Act and the regulations are being complied with in the operation of that business vehicle." I cannot agree that the

BY THE BOOK:

BC's Motor Vehicle Act

Power to search business vehicles

s. 239(1) A peace officer may, without a warrant, search a business vehicle on a highway to determine whether this Act and the regulations are being complied with in the operation of that business vehicle, and for that purpose may require the driver of the business vehicle to stop the business vehicle and permit the search to be made.

BC's Motor Vehicle Act Regulations

Authority to enter premises for an inspection

s. 37.19.02(1) A peace officer may at any reasonable time enter or stop and enter a commercial motor vehicle, except for its sleeper berth, for the purpose of inspecting the daily logs and supporting documents.

> regulation has the effect of qualifying the general power contained in the statute.
>
> On its face, s. 37.19.02(1) relates to an inspection of the daily logs and supporting documents, not the search for undisclosed logbooks. To the extent that there may be overlap between the authority to inspect daily logs of commercial motor vehicles and the authority to search business vehicles for documents evidencing non-compliance with regulations, I do not consider that the regulation could be read as prevailing over the general power expressed in the statute.
>
> Accordingly, it is my view that s. 239 of the MVA authorized the search of the toolbox, notwithstanding that the police officer located the toolbox beneath the sleeper berth of the truck and notwithstanding the provisions of s. 37.19.02(1) of the Regulations. The law recognizes broad powers for search of commercial vehicles when the purpose of the search is regulatory oversight. ... [references omitted, paras. 30-32]

The trial judge did not err in admitting the cocaine as evidence and the accused's appeal was dismissed.

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

FAILURE OF POLICE TO UNDERSTAND s. 10(b) A SERIOUS MATTER

R. v. Mann, 2021 ONCA 103

After calling 911 from a home and telling the dispatcher that he had killed his "so called girlfriend" by choking and beating her to death, the accused was arrested at the scene without incident. The victim was not in fact dead, but suffered life-threatening and permanent injuries, including brain damage, from the attack.

The arresting officer immediately turned the accused over to two other officers. Prior to being placed in the police car, the accused made some spontaneous incriminating utterances. Then, upon being placed in the police car, the accused was told he was under arrest for aggravated assault and advised of his right to counsel and cautioned. The accused indicated that he understood and said that he had no lawyer in town, but that he would speak with duty counsel. He was subsequently charged with attempted murder and aggravated assault.

Ontario Superior Court of Justice

The two officers taking custody of the accused from the arresting officer testified. One of the officers said he asked the accused whether he had been stabbed because he had blood on his clothes. After answering "no", the accused spontaneously stated that he was planning to kill himself with a knife that night, but it was too dull. He said that the knife was in the centre console of his vehicle that was parked outside of the residence and there was also a suicide note. The other officer testified that the accused's statements began while the officers were walking him out of the residence and on their way to the police car. These utterances included: "she just pissed me off"; "I just lost it on her"; "I just snapped"; and "I tried to commit suicide tonight with my knife but it wasn't sharp enough. I tried it on my hands."

The judge found it was reasonable for the officer to ask the accused whether he had been stabbed since there was blood on him. But the judge found the accused's s. 10(b) *Charter* rights had been breached when he had not been informed of his right to counsel at the first opportunity, which was before he was placed in the police car. In the judge's view, between five to 10 minutes had elapsed between the accused's detention and the time that he was removed from the home.

Nevertheless, the judge concluded that the evidence would not be excluded under s. 24(2). First, the breach was not deliberate or so serious that the court needed to disassociate itself from police conduct. Second, because the accused made more serious, self-incriminating remarks when he called 911, the impact on his rights was

"The right to counsel is an extremely important right. Persons who are detained by the police may need immediate advice and counsel. ... It is not up to the police to decide when they will get around to providing rights to a person whom they have arrested. The failure of the police to understand this basic proposition is a serious matter and must be treated as such when it is breached."

"tempered significantly". Finally, even though the exclusion of this statements ***"would not significantly undermine the prosecution's case"***, the evidence was ***"highly relevant"*** to the issue of intent. The accused was convicted of attempted murder and sentenced to life imprisonment. He was also found guilty of aggravated assault but this conviction was stayed on the basis that a person should not be subjected to more than one conviction arising out of the same delict.

Ontario Court of Appeal

The accused contended, among other things, that the trial judge erred in admitting the statement he made to police at the time of his arrest. The Court of Appeal agreed. finding the trial judge erred in her analysis of all three admissibility factors:

> ... First, as found by the trial judge, the officers delayed in providing the [accused] with his rights to counsel. The fact that the officers did not do so deliberately does not lessen the nature of the breach. It simply does not aggravate it. The officers did not offer any explanation for the delay. The crime scene was being adequately handled by the many other officers who were on scene (including two sergeants) and the victim was being treated by paramedics.
>
> The right to counsel is an extremely important right. Persons who are detained by the police may need immediate advice and counsel. ...
>
> It is not up to the police to decide when they will get around to providing rights to a person whom they have arrested. The failure of the police to understand this basic proposition is a serious matter and must be treated as such when it is breached. [references omitted, paras. 29-31]

Moreover, the *Charter* breach and the extraction of the statements was not "tempered" because the police had other evidence of a similar type that was properly obtained (the 911 call). ***"The maxim 'no harm, no foul' has little place in the assessment of a violation of constitutionally protected interests,"*** said Justice Nordheimer. As well, the impugned statements were given prominence in the trial judge's final instructions to the jury and in the Crown's closing submissions. Finally, it was inconsistent to hold that the impact of the evidence was lessened because there was other similar evidence while at the same time finding it was ***"highly relevant"*** and necessary to the prosecution's case.

The Court of Appeal overturned the trial judge's decision on her s. 24(2) analysis and ruled the accused's statements inadmissible from any new trial. The accused's appeal was allowed and his conviction on attempted murder and the finding of guilt on aggravated assault was set aside. A new trial was ordered on both offences.

Complete case available at www.ontariocourts.on.ca

"The maxim 'no harm, no foul' has little place in the assessment of a violation of constitutionally protected interests."

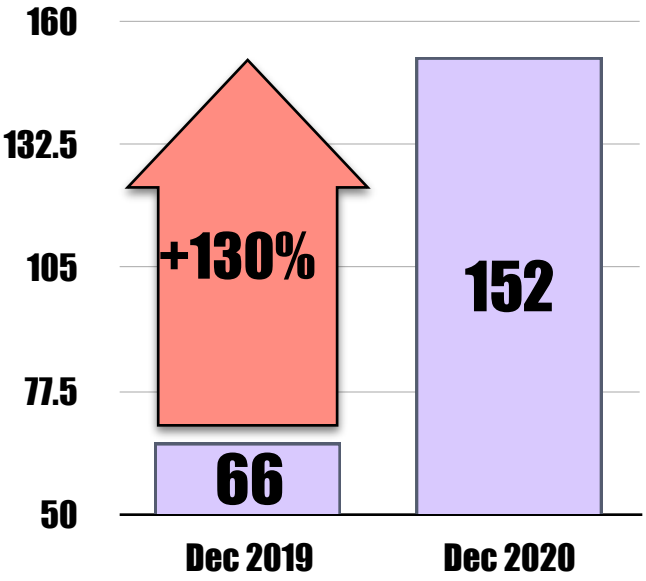
Note-able Quote

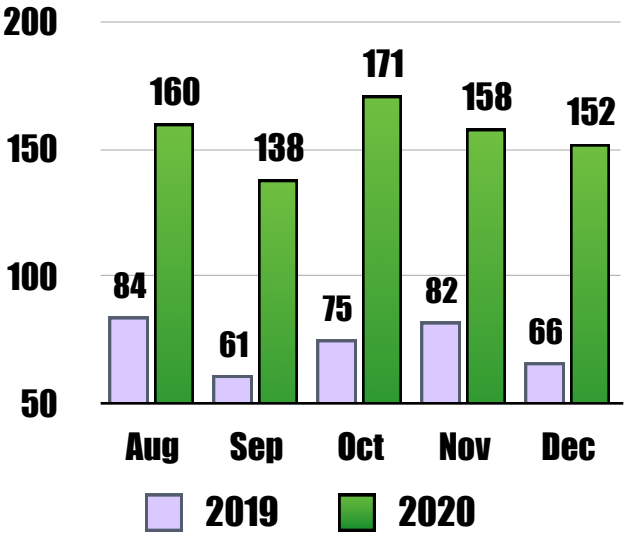
"A leader is one you knows the way, goes the way and shows the way."

~John C. Maxwell~

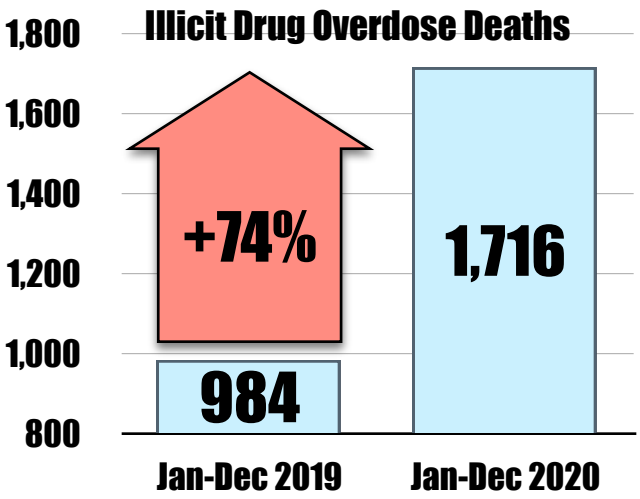
2020 BC ILLICT DRUG TOXICITY DEATHS ALREADY OUTPACE PREVIOUS YEAR

The Office of BC's Chief Coroner has released statistics for illicit drug toxicity deaths (formerly known as illicit drug overdose deaths) in the province from **January 1, 2010 to December 31, 2020**. In December 2020 there were **152** suspected drug toxicity deaths. This represents a **+130%** increase over the number of deaths occurring in December 2019 (**66**).





In 2020, there were a total of **1,716** suspected drug overdose deaths from January to December. This represents an increase of **732** deaths over the 2019 numbers for the same time period (**984**).



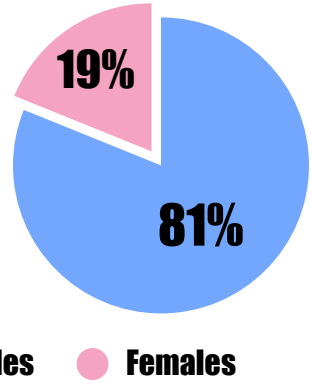
People aged 30-39 and 40-49 were the hardest hit in 2020 with **404** illicit drug toxicity deaths in each age range, followed by 50-59 year-olds (**383**) and 19-29 years-old (**305**). There were **183** deaths among people aged 60-69 had while those under 19 years had **19** deaths. Vancouver had the most deaths at **408** followed by Surrey (**214**), Victoria (**122**), Abbotsford (**65**), Kelowna (**61**), and Kamloops with **60**.

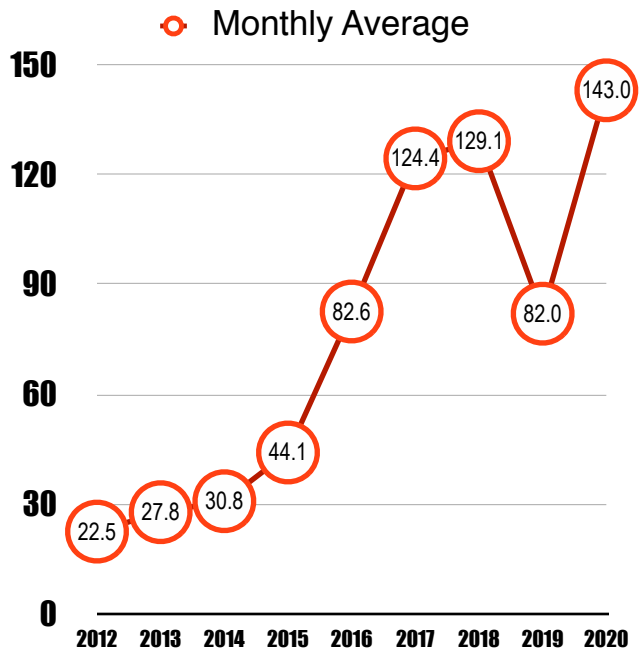
Overall, the 2020 statistics amount to almost **five** (**5**) **people dying every day of the year.**

Deaths by gender

Males continue to die at about a **4:1** ratio compared to females. From January to December 2020, **1,392** males had died while there were **324** female deaths.

The January to December 2020 data indicated that most illicit drug toxicity deaths (**84%**) occurred inside while **14%** occurred outside. For **27** deaths, the location was unknown.



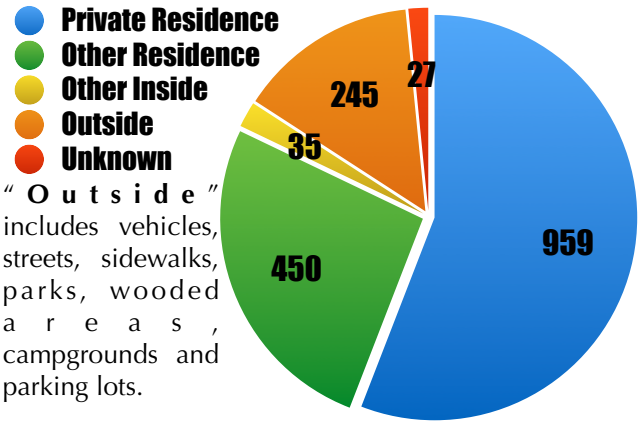


"**Private residence**" includes residences, driveways, garages, trailer homes.

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

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

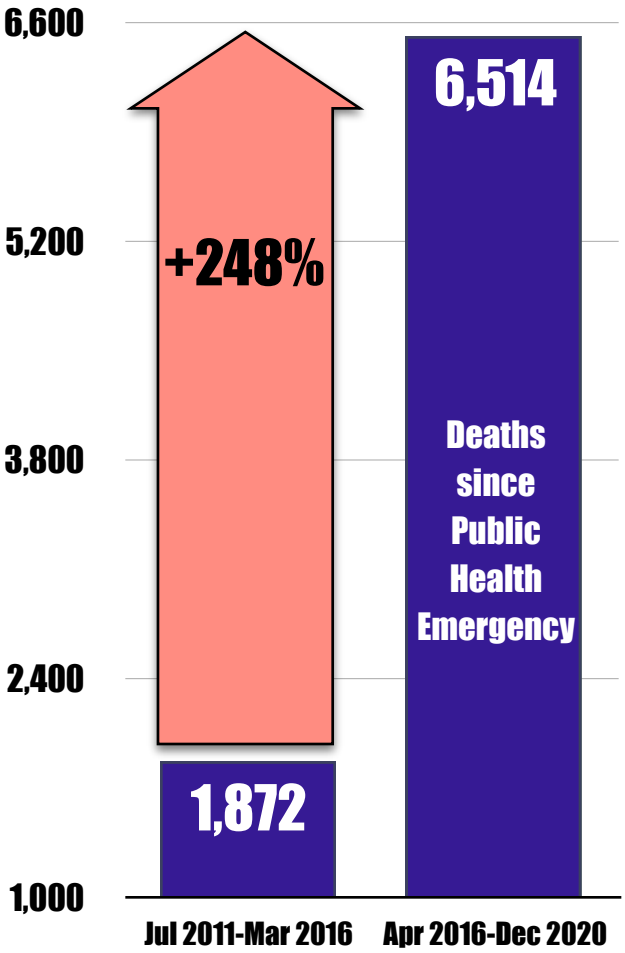
Deaths by location: Jan-Sep 2020



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

DEATHS SINCE PUBLIC HEALTH EMERGENCY

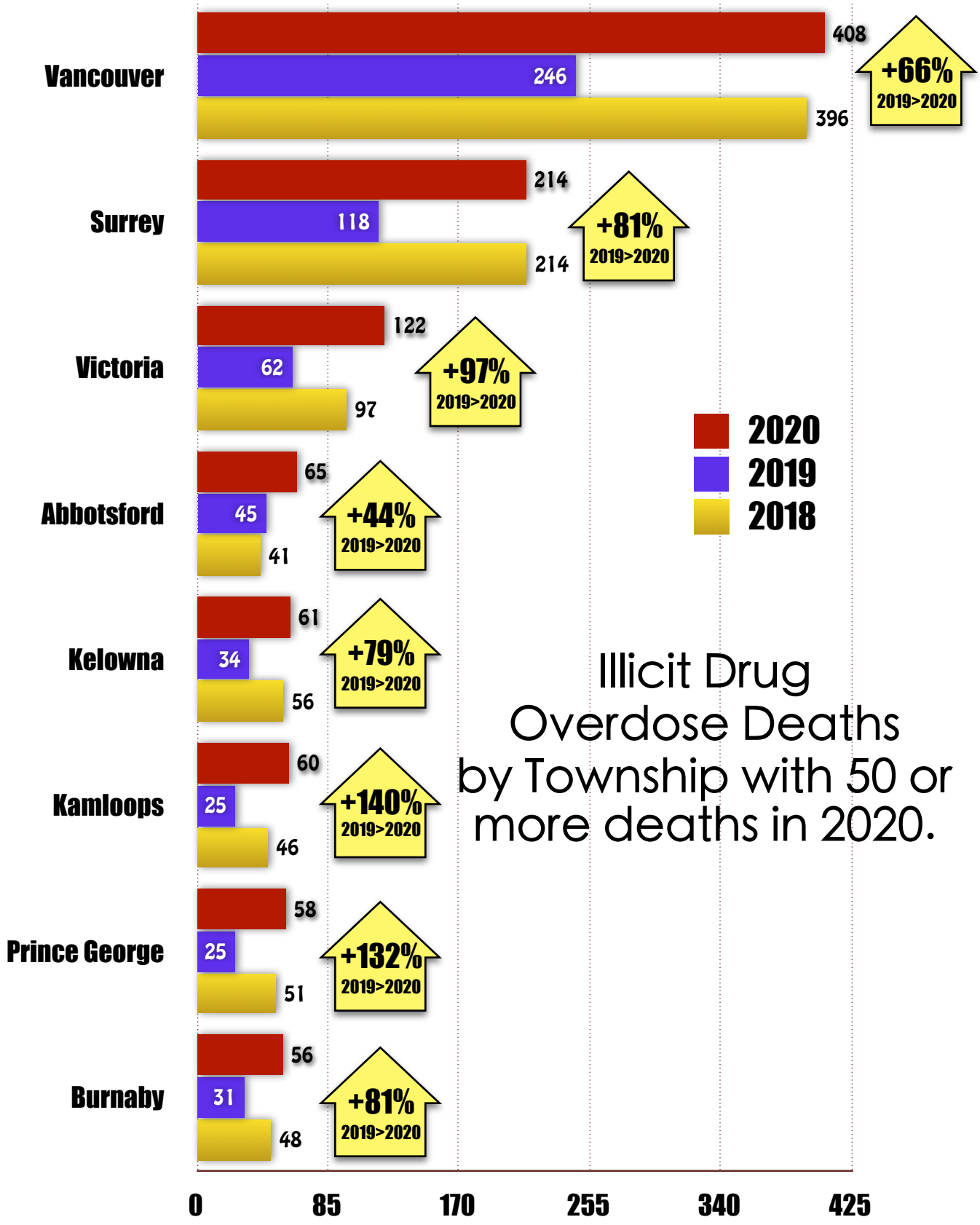
In April 2016, BC's provincial health officer declared a public health emergency in response to the rise in drug overdoses and deaths. The number of overdose deaths in the **57** months preceding the declaration (Jul 2011 - Mar 2016) totaled **1,872**. The number of deaths in the **57** months following the declaration (Apr 2016 - Dec 2020) totaled **6,514**. This is an increase of more than **248%**.



Source: Illicit Drug Toxicity Deaths in BC - January 1, 2010 to December 31, 2020. Ministry of Public Safety and Solicitor General, Coroners Service. February 11, 2021.

TYPES OF DRUGS

The top five detected drugs relevant to illicit drug overdose deaths from 2017 - 2020 were fentanyl and its analogues, which was detected in **86.8%** of deaths, cocaine (**49.4%**), methamphetamine/amphetamine (**35.2%**), ethyl alcohol (**28.1%**) and benzodiazepines (**4.3%**). Other opioids (**29.8%**) and other stimulants (**2.7%**) were also detected.


Vancouver
408
246
396
+66%
2019>2020
Surrey
214
118
214
+81%
2019>2020
Victoria
122
62
97
+97%
2019>2020
Abbotsford
65
45
41
+44%
2019>2020
Kelowna
61
34
56
+79%
2019>2020
Kamloops
60
25
46
+140%
2019>2020
Prince George
58
25
51
+132%
2019>2020
Burnaby
56
31
48
+81%
2019>2020
2020
2019
2018
Illicit Drug Overdose Deaths by Township with 50 or more deaths in 2020.
0
85
170
255
340
425

ASSAULTS AGAINST PEACE OFFICERS ON THE RISE

In December 2020 BC's Ministry of Public Safety and Solicitor General Policing and Security Branch released Crime Trends data for 2010-2019. Data indicates assaults against peace officers were up from 2018 to 2019.

Assaults Against Peace Officers

Year	2016	2017	2018	2019
Number	1,254	1,280	1,440	1,536
Clearance Rate	98.4%	95.5%	96.9%	96.7%
Cleared by Charge	987	933	1,111	1,127
Cleared Otherwise	247	290	285	358
Persons Charged	778	765	882	879

Theft Under $5,000 Most Common Offence

Theft under $5,000 was the most common offence reported to BC police in 2019. This was followed by mischief, disturbing the peace, and assaults (level 1).

2019 Top Seven BC Offences

Offence	Number	Cleared	Persons Charged
Theft under $5,000	133,213	15,068	7,041
Mischief	55,610	10,373	1,763
Disturbing Peace	51,851	14,085	817
Assault Level 1	29,362	16,340	9,244
Break & Enter	28,759	3,120	2,608
Administration of Justice	23,573	19,333	14,111
Fraud	22,816	2,535	1,617

2019 Crime Rates : 100,000+ Residents

Police Jurisdiction	Population	Crime Rate**	Total Criminal Offences	Total Violent Offences	Total Property Offences	Other CC Offences	Homicides	Vehicle Thefts
Nanaimo Mun	100,217	163.2	16,355	2,251	9,784	4,320	0	280
Kelowna Mun	142,162	128.7	18,298	2,510	12,075	3,713	1	738
Kamloops Mun	100,046	119.9	11,991	2,236	7,515	2,240	3	286
Victoria Mun	112,721	117.9	13,292	2,607	8,827	1,858	0	279
Vancouver Mun	687,664	84.1	57,865	8,748	43,975	5,142	12	1,389
Langley Township Mun	131,561	78.4	10,312	1,528	6,691	2,093	0	593
Surrey Mun	584,851	77.7	45,431	8,609	26,439	10,383	19	1,730
Burnaby Mun	253,007	65.2	16,494	2,394	11,383	2,717	1	527
Abbotsford Mun	158,582	60.7	9,633	1,880	6,973	780	1	613
Richmond Mun	212,276	58.3	12,383	1,877	8,000	2,506	2	313
Coquitlam Mun	149,959	53.4	8,006	1,212	5,037	1,757	2	262
Delta Mun	110,443	47.6	5,258	1,005	3,392	861	0	150
Saanich Mun	122,173	41.7	5,099	1,031	3,646	422	0	69

** per 100,000 residents. Source: British Columbia Policing Jurisdiction Crime Trends, 2010 - 2019

Crime Up In Populous Cities

Only one police jurisdiction with a population of more than 100,000 residents (Abbotsford) saw a decrease in *Criminal Code* offences.

All other jurisdictions with a population of more than 100,000 saw an increase in *Criminal Code* offences. This ranged from a low of a **+3.6%** increase to a high of a **+48.7%**.

2019 C.C. Offences Change: Jurisdictions Over 100,000

Police Jurisdiction	Total Criminal Code Offences		Change	Police Jurisdiction	Total Criminal Code Offences		Change
	2018	2019	2018>2019		2018	2019	2018>2019
Nanaimo Mun	10,999	16,355	+48.7%	Coquitlam Mun	7,177	8,006	+11.6%
Burnaby Mun	13,149	16,494	+25.4%	Saanich Mun	4,650	5,099	+9.7%
Kelowna Mun	14,717	18,298	+24.3%	Surrey Mun	41,907	45,431	+8.4%
Kamloops Mun	10,157	11,991	+18.1%	Vancouver Mun	55,178	57,865	+4.9%
Delta Mun	4,512	5,258	+16.5%	Richmond Mun	11,947	12,383	+3.6%
Langley Township Mun	9,000	10,312	+14.6%	Abbotsford Mun	10,198	9,633	-5.5%
Victoria Mun	11,747	13,292	+13.2%				

Homicides Remain Stable

There was no change in the number of homicides from 2018 to 2019. In both years there were **90** homicides in BC.

Independent Police Forces

Only one jurisdiction policed by an independent police force (Abbotsford) saw a reduction in *Criminal Code* offences. All others saw an increase.

2019 C.C. Offences Change: Independent Police Forces

Police Jurisdiction	Total Criminal Code Offences		Change	Crime Rate**	Police Jurisdiction	Total Criminal Code Offences		Change	Crime Rate**
	2018	2019	2018>2019			2018	2019	2018>2019	
Abbotsford Mun	10,198	9,633	-5.5%	60.7	Port Moody Mun	1,019	1,049	+2.9	29.9
Central Saanich Mun	480	493	+2.7%	27.3	Saanich Mun	4,650	5,099	+9.7%	41.7
Delta Mun	4,512	5,258	+1.7	47.6	Vancouver Mun	55,178	57,865	+4.9%	84.1
Nelson Mun	792	858	+8.3	75.5	Victoria Mun	11,747	13,292	+13.2%	117.9
New Westminster Mun	5,054	5,629	+11.4	70.6	West Vancouver Mun	2,429	2,459	+1.2%	52.2
Oak Bay Mun	535	627	+17.2%	33.8	** per 100,000 residents.				

PRIMA FACIE CASE FOR CONVICTION NOT REQUIRED WHEN MAKING AN ARREST

R. v. Orr, 2021 BCCA 42

Police initiated an investigation into the accused after receiving information from three confidential informers that he was trafficking in drugs. During the investigation, surveillance was conducted over six days in or near the apartment building in which the accused lived. Police also had complaints from tenants of the apartment building about the accused trafficking in drugs. While conducting their surveillance, the police made 10 observations that were consistent with drug trafficking, including three occasions where the accused was seen leaving the apartment building and getting into a vehicle for a short period. On five occasions, people known or suspected to be involved in the drug trade entered the building at the accused's invitation and remained there for short periods. On two occasions, police saw people who left the accused's company conduct a hand-to-hand transaction with someone else or get into a vehicle for a short period. The accused was also observed using a key to enter an apartment. As well, the management company for the accused's apartment building confirmed he was a tenant in the building.

The police obtained a warrant to search the accused's apartment. The Information to Obtain (ITO) included the informer information, the complaints by other residents of the apartment building, observations made during the surveillance, and the management company's confirmation of the accused's tenancy. As well, the ITO contained the accused's criminal record, including a prior conviction for possessing drugs for the purpose of trafficking and three convictions for weapons offences. The ITO also indicated that the police had conducted a previous search of the accused's residence (at a different location) three years earlier. At that time, 14.9 grams of cocaine, 11.8 grams of heroin, two cell phones and $1,128 in cash were found.

What police found:

- 30 pills containing ketamine and fentanyl.
- 15.4 grams of "pebbled heroin and fentanyl";
- 122 grams of caffeine;
- Multiple score sheets;
- Working digital scale;
- $5,005 in cash;
- Money counter;
- iPhone;
- Machete;
- Six knives including a prohibited push dagger; and
- Baton.

The following day the lead investigator directed the accused's arrest for possession of cocaine for the purpose of trafficking. He was arrested by the Emergency Response Team (ERT) away from his apartment in the parking lot of an auto parts store. He was searched incidental to the arrest. After the arrest, the police executed the search warrant using the keys found in the accused's possession to open the apartment door. During the search, police found drugs and other evidence, and a prohibited weapon - a push dagger. Eight days after the search warrant was executed the accused was charged with various drug and weapons offences. An unendorsed warrant was issued for his arrest and it was executed about three months later.

British Columbia Supreme Court

The accused argued several of his *Charter* rights had been breached, including s. 9. He submitted his warrantless arrest was arbitrary because it was not supported by reasonable grounds. He wanted the evidence excluded under s. 24(2).

Only one witness - a sergeant - testified about the warrantless arrest. He was a supervisor with the Strike Force unit, had worked in an undercover capacity in street drug investigations and had eight years experience with an emergency response

team. He had also been qualified by a court to give expert opinion evidence as a "drug expert", had specialized training in controlled substances, and had experience recruiting and managing confidential informers and in surveillance techniques. The sergeant also personally participated in the surveillance of the accused as part of the drug investigation. On the day before the accused's arrest, the sergeant concluded that police should arrest the accused for drug offences and apply for a warrant to search his residence. He relayed his conclusion to other officers and they took steps to effect the arrest.

The judge found the warrantless arrest was lawful. Not only did the police officers effecting the arrest honestly believe that he was, at the time of his arrest, in possession of a controlled substance for the purpose of trafficking, the information known to police at the time of the arrest objectively justified it. The evidence was admitted and the accused was convicted on two charges of possessing drugs for the purpose of trafficking and possessing a prohibited weapon.

British Columbia Court of Appeal

The accused argued, among other things, that the trial judge erred in finding there were objectively reasonable grounds for his warrantless arrest. He did not challenge the sergeant's subjective belief that he possessed a controlled substance for the purpose of trafficking. But he submitted that any such subjective belief was not objectively reasonable.

The accused said there was no evidence he was involved in an actual hand-to-hand drug transaction. Rather, he asserted the observations made of him were equally consistent with lawful activity. And no observations were made of him inside his apartment engaged in drug transactions with the people who entered. He contended that police knowledge and experience in drug trafficking investigations could not make up for the lack of objective support for an arrest.

The Crown, on the other hand, suggested the police had the necessary objective reasonable grounds to believe the accused had committed or was about to commit a criminal offence. Surveillance observations, other information available, and the sergeant's knowledge and experience as a drug investigator justified the warrantless arrest.

Justice DeWitt-Van Oosten described the power of arrest under s. 495(1)(a) of the *Criminal Code* as involving a two-part test:

- the arresting officer must subjectively believe that the person arrested had committed or was about to commit an indictable offence; and
- the officer's grounds for their belief must be objectively reasonable.

Citing other cases, she also noted the following:

- An officer's training and experience are relevant in assessing objective reasonableness.
- There need not be a *prima facie* case for conviction before an arrest without a warrant is made.
- The reasonable grounds standard requires something more than mere suspicion, but something less than the standard applicable in civil matters of proof on the balance of probabilities.
- Determining whether reasonable and probable grounds exist requires an assessment of the "totality of the circumstances".

In upholding the trial judge's conclusion that the officer had reasonable grounds to justify the arrest, Justice DeWitt-Van Oosten stated:

> In this case, the trial judge found a subjective belief that the [accused] was in possession of one or more controlled substances for trafficking. In my view, he also correctly found there was an objectively reasonable basis for that belief. The totality of the circumstances known to police, including: the past

> involvement in drug offences; the concerns expressed by other tenants in his building; the information received from confidential informers; the observations made of the [accused] and people interacting with him; and [the sergeant's] knowledge and experience with drug trafficking investigations generally, provided a credibly-based probability of possession and trafficking. Police acknowledged they did not see the [accused] in physical possession of actual drugs, transporting them, or distributing them to other individuals. However, [the sergeant] was entitled to inform the inferences he drew about the [accused's] conduct with reference to the other information in his possession. As the Crown has appropriately emphasized in the appeal, it is the cumulative effect of the information known to police that matters. Individual pieces of evidence adduced on the evidentiary voir dire may carry the possibility of alternative (and innocent) inferences. However, the evidence in support of a warrantless arrest is "not [to be] assessed on a piece meal basis". [reference omitted, para. 78]

The officer had an honestly held belief that was objectively reasonable. There was no s. 9 breach.

The accused's appeal was dismissed.

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

BC's 15 Highest Crime Rates: 2019

Policing Jurisdiction	Crime Rate	Population
Tsay Keh Dene Prov	592.3	596
Takla Landing Prov	331.7	202
Williams Lake Mun	290.8	11,359
Terrace Mun	289.7	12,594
Quesnel Mun	286.2	10,392
Port Hardy Prov	260.6	5,587
Fort St James Prov	254.3	4,431
Prince George Mun	234.1	81,323
Duncan Prov	232.7	16,036
Hope Mun	230.5	6,667
Prince Rupert Mun	225.4	13,054
Merritt Mun	221.9	7,727
Penticton Mun	218.9	36,425
Agassiz Prov	205.0	3,902
Langley City Mun	197.6	27,718

Source: British Columbia Policing Jurisdiction Crime Trends, 2010 - 2019

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