JUSTICE INSTITUTE of BRITISH COLUMBIA

IN SERVICE: 10-8

A PEER READ PUBLICATION

IN MEMORIAM

On June 12, 2021, 26-year-old Royal Canadian Mounted Police Constable Shelby Patton of the Indian Head Detachment in Saskatchewan was killed in the line of duty. At about 8:00 am he was following two suspects who were driving a truck that was stolen in Manitoba. Constable Patton initiated a traffic stop in the town of Wolseley. During the course of the stop, while outside of his police vehicle, Constable Patton was struck by the truck. He died at the scene. Two suspects, an adult male and adult female, were subsequently located and arrested.

Constable Patton served with the RCMP for six years and four months. Before officially beginning his duties at the Indian Head Detachment, he was on assignment at Parliament Hill. He is survived by his wife, parents and brother.

~ Constable Shelby Patton ~

"No one should have to wake up and learn their family member died as a result of doing their job ..."

Assistant Commissioner Rhonda Blackmore,
Commanding Officer, Saskatchewan RCMP

Source: Statement from Saskatchewan RCMP Commanding Officer, Assistant Commissioner Rhonda Blackmore: death of an on-duty officer

Highlights In This Issue

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ENTRAPMENT ISSUE

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.

The 7 habits of highly effective people: powerful lessons in personal change.

Stephen R. Covey; foreword by Jim Collins.

New York, NY: Simon & Schuster, 2020.

BF 637 S8 C68 2020

Child abuse and neglect in Canada: a guide for mandatory reporters.

Lea Tufford.

New York, NY: Oxford University Press, 2020.

HV 6626.54 C2 T84 2020

Creating healthy organizations: taking action to improve employee well-being.

Graham Lowe.

Toronto; Buffalo; London: University of Toronto Press, 2020.

Available in eBook format only (JIBC login required)

Cybersecurity for everyone.

David B. Skillicorn.

Boca Raton : CRC Press, 2021.

QA 76.9 A25 S55 2021

The data detective: ten easy rules to make sense of statistics.

Tim Harford.

New York, NY: Riverhead Books, 2021.

HA 29 H249 2021

Designing microlearning.

Carla Torgerson & Sue Iannone.

Alexandria, VA: ATD Press, 2020.

LB 1027.415 T66 2020

Also available in eBook format (JIBC login required)

Fast facts about medical cannabis and opioids: minimizing opioid use through cannabis.

Gregory L. Smith & Kevin F. Smith.

New York, NY: Springer, 2021.

Available in eBook format only (JIBC login required)

A handbook for authentic learning in higher education: transformational learning through real world experiences.

Andy Pitchford, David Owen & Ed Stevens.

Abingdon, Oxon; New York, NY: Routledge, Taylor & Francis Group, 2021.

LC 1100 P58 2021

High performance managerial leadership: best ideas from around the world.

André A. de Waal, foreword by Chris Abbott.

Santa Barbara, CA: Praeger, an imprint of ABC-CLIO, 2020.

Available in eBook format only (JIBC login required)

How to listen and how to be heard: inclusive conversations at work.

Alissa Carpenter.

Newburyport, MA: Career Press, 2020.

HD 30.3 C356 2020

Also available in eBook format (JIBC login required)

Screening for risk: the Occupational Stress Injury Resiliency Index for first responders and other designated workers.

Ottawa, ON: Conference Board of Canada, 2021.

RC 963.48 H68 2021

Available freely on the internet

Stereotypes: the incidence and impacts of bias.

Joel T. Nadler & Elora C. Voyles, editors.

Santa Barbara, CA; Denver, CO: Praeger, 2020.

Available in eBook format only (JIBC login required)

Teams that work: the seven drivers of team effectiveness.

Scott Tannenbaum & Eduardo Salas.

New York, NY: Oxford University Press, 2021.

HD 66 T364 2020

JUSTICE INSTITUTE of BRITISH COLUMBIA

SCHOOL OF CRIMINAL JUSTICE & SECURITY

JUSTICE & PUBLIC SAFETY DIVISION

BACHELOR OF LAW ENFORCEMENT STUDIES (BLES)

Get Ahead of the Competition

Today's law enforcement and public safety environment is complex. Employees in public and private organizations are increasingly being called upon to perform inspections, investigations, security supervision, enforcement and regulatory compliance functions. The Bachelor of Law Enforcement Studies (BLES) provides expanded opportunities in the study of law enforcement and public safety and will position you to be a sought-after candidate in a highly competitive recruiting environment. Our education program will prepare you for success by developing your leadership skills, and enhancing your interpersonal communications, critical thinking and ethical decision making.

WHAT WILL I LEARN?

This comprehensive program will prepare you to contribute to a just and fair society as a member within a variety of criminal justice and public safety professions. Graduates will obtain:

- An in-depth knowledge of the Canadian criminal justice system.
- Analysis and reasoning skills informed by theory and research.
- Skills required to effectively work within a law enforcement agency.

WHO SHOULD TAKE THIS PROGRAM

- Graduates of JIBC's two-year Law Enforcement Studies Diploma (LESD) or applicants a diploma or associate degree in a related field can begin in the third year of the Bachelor of Law Enforcement Studies program.
- Applicants who have completed a peace officer training program with a minimum of three years full-time service in a recognized public safety agency with a Prior Learning Assessment that would allow for 60 credits to be granted towards completion of the degree program.

CAREER FLEXIBILITY

The program will provide you with the in-depth knowledge, expanded skills and competencies to seek employment in a wide range of law enforcement, public safety, regulatory, and compliance fields offering you more career flexibility and professional development. Examples of potential roles include:

- police officer
- conservation officer
- animal cruelty officer
- border services agency official
- fraud investigator
- by-law enforcement officer
- regulatory enforcement officer
- gaming investigator
- correctional officer
- deputy sheriff
- intelligence services officer
- probation officer

BACHELOR OF LAW ENFORCEMENT STUDIES (BLES)

CURRICULUM AT A GLANCE

Courses in years one and two are offered through the Law Enforcement Studies Diploma. Years three and four build on these courses to complete the degree. Students can pursue their third and fourth year studies full-time or part-time to complete the final 60 credits.

Year 3

- Criminal & Deviant Behaviour
- Comparative Criminal Justice
- Leadership in a Law Enforcement Environment
- Search & Seizure Law in Canada
- Organizational Behaviour
- Investigations & Forensic Evidence
- Restorative Justice
- Project Management
- Data & Research Management

Year 4

- Aboriginal People and Policy
- Multiculturalism, Conflict and Social Justice
- Administrative and Labour Law in Canada
- Applied Research in Public Safety and Law Enforcement
- Professional Practice in Justice and Public Safety
- Crisis Intervention
- Research Project
- Governance and Accountability in Law Enforcement
- Terrorism and Society
- Organized Crime and Society

PROGRAM FORMAT

Students can pursue their studies full-time at the New Westminster campus or online. The full-time on-campus format consists of 60 credits completed over two years with courses over the fall and winter semesters (five courses per semester). The online format consists of 60 credits that must be completed within five years with the flexibility to take courses in the fall, winter and spring-summer semesters.

HOW TO APPLY?

Credit for the first two years of BLES will be granted to students who meet the program's admission requirements. For details on admission requirements and application deadlines please visit our website at jibc.ca/bles.

FOR MORE INFORMATION:

jibc.ca/bles

bles@jibc.ca
604-528-5778

STAY CONNECTED:

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JUSTICE INSTITUTE of BRITISH COLUMBIA

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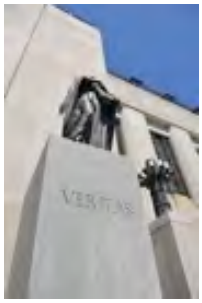
Justice Institute of British Columbia (JIBC) is Canada's leading public safety educator recognized nationally and internationally for innovative education in justice, public safety and social services.

CANADA's HIGHEST COURT HEARS FEWER CASES



In its report, **"2020 Year in Review"**, last years' workload of Canada's top Court was highlighted. In 2020 the Supreme Court heard only **41** appeals. This was down **40%** from the **69** appeals it heard in 2019. The most appeals heard annually in the last 10 years was in 2014 when **80** cases were brought before the Court. The lowest number of appeals heard in a single year during the last decade was last year (2020).

Case Life Span

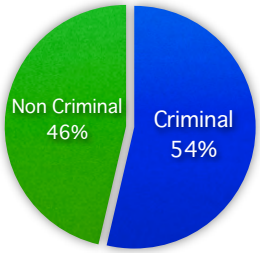
The time it took for the Court to render a judgment from the date it heard a case in 2020 was **5.4** months, up slightly from **5.3** months in 2019 and **4.8** months in 2018. The shortest time within the last 10 years for the Court to announce its decision after hearing argument was **4.1** months (2014) while the longest time was **6.3** months (2012). Overall it took **17.4** months in 2020, on average, for the Court to render an opinion from the time an application for leave to hear a case was filed. This is up from the previous year (2019) when it took **15.8** months.

Applications for Leave

In 2020 there were **483** applications for leave submitted to the court, meaning a party sought permission to appeal the decision of a lower court. This represents **69** less applications for leave than 2019. Ontario was the source of most applications for leave at **134** cases. This was followed by Quebec (**127**), the Federal Court of Appeal (**64**), Alberta (**51**), British Columbia (**42**), Saskatchewan (**21**), Manitoba (**15**), Nova Scotia (**9**), New Brunswick (**7**), Prince Edward Island (**6**), Newfoundland and Labrador (**4**), the Yukon (**2**) and Nunavut (**1**). No applications for leave came from the Northwest Territories. Of the known outcomes for leave applications, only **35** or **7%** were granted while **2** were pending. Of all applications for leave, **18%** were criminal law in nature while another **6%** were *Charter* (criminal).

Appeals Heard

Of the **41** appeals heard in 2020, Ontario had the most of any province at **14**. This was followed by Quebec and Alberta with eight (**8**) each, British Columbia (**6**), Saskatchewan (**3**), and the Federal Court of Appeal and Nova Scotia with one (**1**) each. None of the appeals heard originated from Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island or the Yukon.



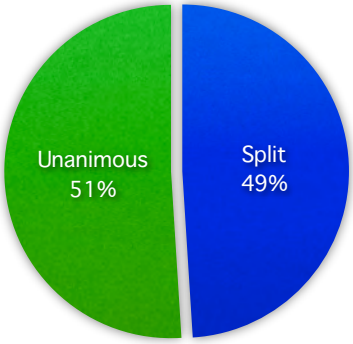
Of the appeals heard in 2020, **22** (or **54%**) were criminal. Seventeen (**17**) or **42%** of these were criminal law cases while five (**5**) (or **12%**) were *Charter* criminal cases.

Nineteen (**19**) appeals heard in 2020 were as of right. This source of appeal includes cases where there was a dissent on a point of law in a provincial court of appeal. Ontario and Alberta had the most appeals as of right (**6 each**), followed by British Columbia (**5**), Quebec (**3**), Saskatchewan (**2**) and Manitoba, Nova Scotia, and Newfoundland and Labrador at one (**1**) each.

Appeals Decided

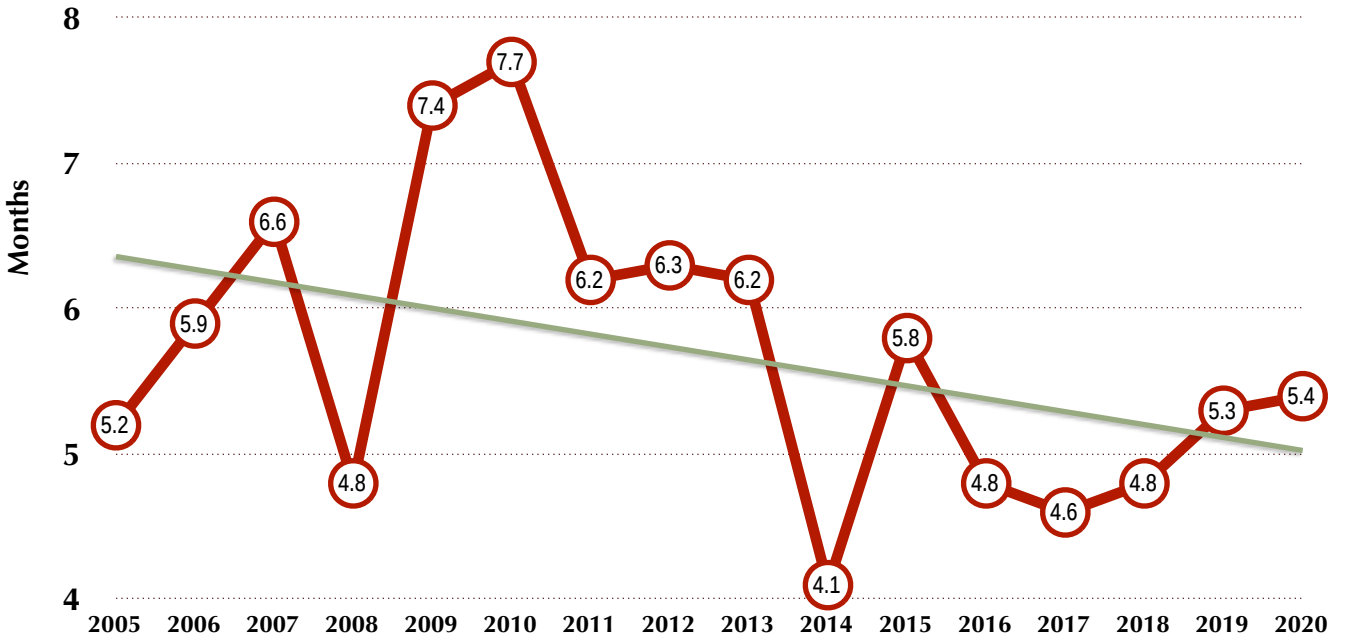
There were **45** appeal judgments released in 2020, down from **72** the previous year. Seventeen (**17**) decisions were delivered from the bench while the remaining **28** were reserved with written reasons to follow. Twenty-four (**24**) appeals were allowed while **21** were dismissed. Seventeen (**17**) appeal decisions were on reserve as at December 31, 2020.

In terms of agreement, the judges of the Supreme Court were unanimous less than half the time, or only **49%** of its cases. This is up from **42%** unanimity in 2019 but down significantly from the Court's **79%** agreement in 2014. For the remaining **51%** of its judgments released in 2020 the Court was split.



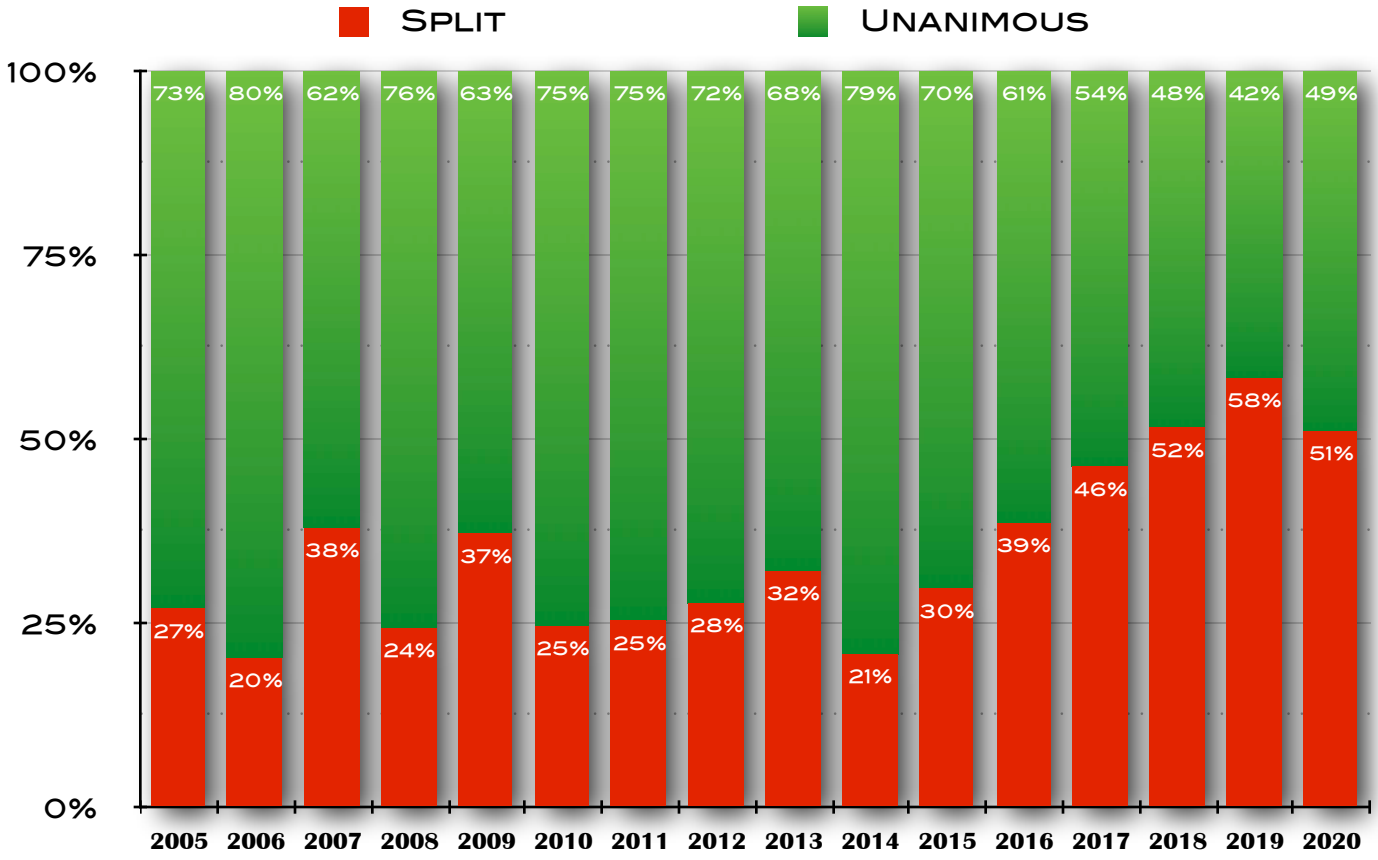
Source: www.scc-csc.gc.ca

Average Time Lapses (in months) between SCC hearing and judgment

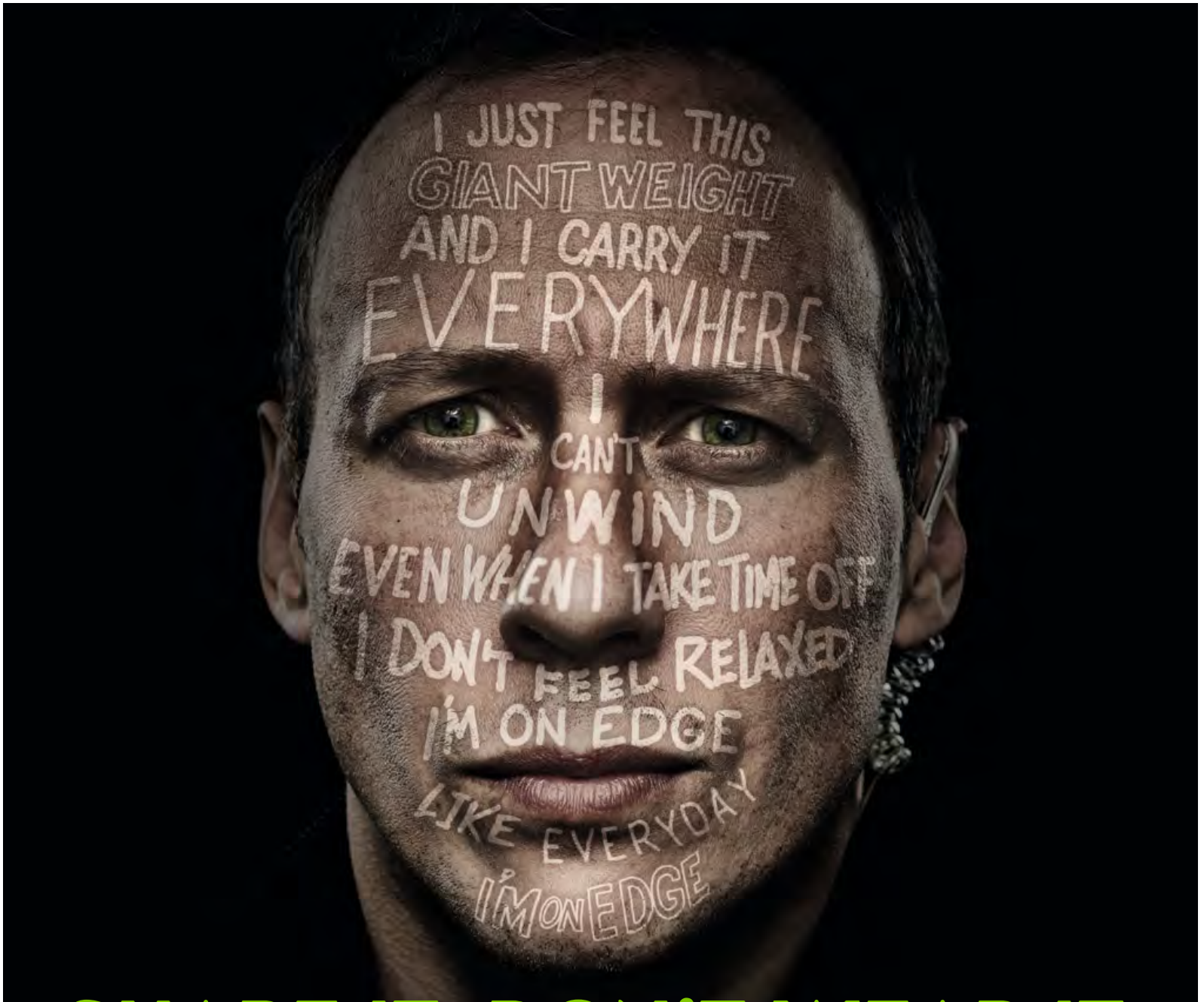


Additional years' statistics obtained from Supreme Court of Canada - Statistics 2005 to 2015.

SUPREME COURT OF CANADA DECISIONS: SPLIT v. UNANIMOUS



Additional years' statistics obtained from Supreme Court of Canada - Statistics 2005 to 2015.



SHARE IT. DON'T WEAR IT.

IT'S TIME TO SPEAK UP ABOUT MENTAL HEALTH.

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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 ADMINISTRATIVE ALCOHOL & DRUG RELATED DRIVING PROHIBITIONS

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

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

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

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

Administrative Driving Prohibitions

An Administrative Driving Prohibition (ADP) is a 90-day driving prohibition served on drivers who:

- fail or refuse without a reasonable excuse to follow a demand under ss. 320.27 or 320.28 of the *Criminal Code* regarding the operation of a motor vehicle (s. 94.1(1)(b) *MVA*).
- provide a breath test into an approved instrument, such as an Intoxilyzer, within two-hours of driving and the driver's breath sample indicates a BAC at or above 80mg% (s. 94.1(1)(a) *MVA*).
- have a blood drug concentration equal to or greater than the amount prescribed in BC's *Motor Vehicle Act Regulations* (*MVAR*) for that drug within two hours of operating a vehicle (s. 94.1(1)(a.1) *MVA)*.

Drug	Concentration
Tetrahydrocannabinol (THC)	5ng/mL of blood
Lysergic acid diethylamide (LSD)	Any detectable level
Psilocybin	Any detectable level
Psilocin	Any detectable level
Phencyclidine (PCP)	Any detectable level
Monoacetylmorphine	Any detectable level
Ketamine	Any detectable level
Cocaine	Any detectable level
Gamma hydroxybutyrate (GHB)	5mg/L of blood
Methamphetamine	Any detectable level

- have a combined BAC and drug concentration equal to or greater than the amount prescribed under BC's *MVAR* where alcohol and that drug are combined within two hours of operating a motor vehicle (s. 94.1(1)(a.2) *MVA*).

Alcohol Concentration	Drug Concentration
50 mg%	Tetrahydrocannabinol (THC) 2.5 ng/mL of blood

- have operated a vehicle while their ability to operate it was impaired by a drug or a combination of alcohol and a drug as determined by a drug recognition expert (DRE) (s. 94.1(1)(a.3) *MVA*). An evaluation conducted by a DRE includes:
  - ➡ horizontal gaze nystagmus test;
  - ➡ vertical gaze nystagmus test;
  - ➡ lack-of-convergence test;
  - ➡ Romberg balance test;
  - ➡ walk-and-turn test;
  - ➡ one-leg stand test;
  - ➡ finger-to-nose test;
  - ➡ measuring pulse, blood pressure, temperature, and pupil size.

Source: Alcohol and drug related driving prohibitions and suspensions [accessed May 31, 2021]

IMMEDIATE ROADSIDE PROHIBITIONS

	WARN	WARN	WARN	FAIL or REFUSE
ASD Result	BAC .05 - .08	BAC .05 - .08	BAC .05 - .08	BAC over .08
Incident	1st incident	2nd incident within 5 years	3rd incident within 5 years	
IRP Length	3 days	7 days	30 days	90 days
Vehicle Impound Length	3 days (officer discretion)	7 days (officer discretion)	30 days	30 days
Administrative penalty	$200	$300	$400	$500
Licence Reinstatement Fee	$250	$250	$250	$250
Vehicle Impound & Towing Fees (10km)	$150+	$230+	$680+	$680+

Source: Immediate Roadside Prohibition Penalties

Alcohol-Related Motor Vehicle Fatalities

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

"In the final three months of 2010, the MV fatalities related to alcohol for the province were reduced by 58%, from an average of 26 to 11," noted the report. ***"This reduction has continued from 2012 through 2019 with there being 50% fewer alcohol-related fatalities since the introduction of the IRP."***

Source: Report on Alcohol-Related Motor Vehicle (MV) Fatalities [accessed May 31, 2021]

Fatal Victims in Crashes where Alcohol was Deemed a Contributing Factor

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Fatal Victims	129	114	128	102	92	111	68	49	52	59	61	52	64	56	49

There were **100** fatal victims from January - September 2010 and **11** from October - December 2010.
The IRP program was implemented on September 20, 2010.
Source: Report on Alcohol-Related Motor Vehicle (MV) Fatalities [accessed May 31, 2021]

BC's ALCOHOL DRIVING PROHIBITIONS

	Immediate Roadside Prohibitions						Administrative Driving Prohibitions				
	Warn			90 Days			90 Days				Total IRP & ADP
YEAR	3 day IRP	7 day IRP	30 day IRP	FAIL	REFUSE	Total IRP	OLD (FAIL)	NEW	REFUSE	Total ADP	
2011	7,874	154	7	13,190	1,446	22,671	1,900		520	2,420	25,091
2012	5,391	222	12	6,784	1,161	13,570	3,576		696	4,272	17,842
2013	6,066	309	30	11,577	1,414	19,396	1,021		340	1,361	20,757
2014	5,702	368	26	11,240	1,470	18,806	1,049		352	1,401	20,207
2015	4,670	351	32	9,288	1,863	16,204	1,127		481	1,608	17,812
2016	4,588	334	33	8,864	1,830	15,649	1,127		464	1,591	17,240
2017	4,243	259	19	8,388	1,715	14,624	1,067		419	1,486	16,110
2018	4,736	292	23	9,207	1,710	15,968	1,021		377	1,398	17,366
2019	5,034	315	26	9,124	1,681	16,180	485	469	348	1,302	17,482
2020	3,663	274	26	7,589	1,530	13,082	-	965 (see below)	429	1,394	14,476

Source: Alcohol Driving Prohibitions
[accessed May 31, 2021]

2020 Administrative Driving Prohibitions Reporting

Alcohol Breath	Alcohol Blood	Drug Blood	Alcohol & Drug Combined	DRE	Total
777	49	22	2	115	965

24-HOUR DRIVING PROHIBITIONS DOWN

The number of 24-hour driving prohibitions issued to BC drivers in 2020 was the same as 2019. Under s. 215 of BC's *Motor Vehicle Act*, a peace officer may prohibit a driver from driving for 24 hours provided the officer has reasonable grounds to believe alcohol or drugs has affected the driver's ability to operate a motor vehicle. A driver ***"includes a person having the care or control of a motor vehicle on a highway or industrial road whether or not the motor vehicle is in motion."***

The peace officer need not request a breath sample using an approved screening device to determine the driver's BAC, nor require the driver submit to a physical coordination test. However, a driver served with a 24-hour prohibition may request the officer test their BAC on an approved screening device. If the driver believes a drug has not affected their ability to drive, they can ask for a prescribed physical coordination test.

Impoundment

A peace officer may also ***"immediately cause the motor vehicle that the driver was operating or of which the driver had care or control to be taken to a place directed by the peace officer and impounded there for a period of 24 hours" "if the peace officer believes that impoundment is necessary to prevent the driver from driving or operating the motor vehicle before the prohibition expires"***.

24-HOUR DRIVING PROHIBITIONS

Year	Alcohol		Drugs		Total
	Number	% of Total	Number	% of Total	Number
2011	4,090	48%	4,460	52%	8,550
2012	7,230	66%	3,790	34%	11,020
2013	3,280	46%	3,840	54%	7,120
2014	3,300	52%	3,100	48%	6,400
2015	3,300	56%	2,600	44%	5,900
2016	3,200	55%	2,600	45%	5,800
2017	2,900	54%	2,500	46%	5,400
2018	2,900	52%	2,700	48%	5,600
2019	2,900	53%	2,600	47%	5,500
2020	2,170	39%	3,330	61%	5,500
10 year TOTAL	35,270	53%	31,520	47%	66,791

Source Alcohol and drug related driving prohibitions and suspensions [accessed May 31, 2021]

Suspected cocaine seized by the CBSA at the Blue Water Bridge port of entry in Point Edward, Ontario, on April 15, 2020. a truck driver arrived at the Blue Water Bridge, and was referred for a secondary examination. Officers conducted a thorough search and discovered suspected cocaine weighing approximately 19 kilograms and valued at approximated $3 million. Source: News Release

CBSA SEIZURE STATS

Canada Border Services Agency (CBSA) released its seizure statistics for the 2020-2021 fiscal year (posted May 5, 2021). The fiscal year began on April 1 , 2020 and ended March 31, 2021.

DRUGS

Cannabis Products		
2019/2020	2020/2021	Change
4,322,136 grams	11,777,828 grams	+173%

Cannabis products includes dried and fresh cannabis, cannabis seeds, solids, non-solids, concentrates and synthetic cannabis.

Hashish		
2019/2020	2020/2021	Change
24,370 grams	10,326 grams	-58%

Cocaine/Crack		
2019/2020	2020/2021	Change
1,304,903 grams	1,214,509 grams	-7%

Cocaine/crack includes coca leaves, coca paste, cocaine and cocaine crack.

Fentanyl		
2019/2020	2020/2021	Change
2,951 grams	7,399 grams	+151%

Other Opioids		
2019/2020	2020/2021	Change
991,312 grams	1,160,952 grams	+17%
70 dosage	5 dosage	-93%

Other opioids includes opium, methadone, morphine and morphine base.

Tobacco		
2019/2020	2020/2021	Change
10,698 Cartons	185,040 Cartons	+1,630%
173,391 Kg	559,439 Kg	+223%

Jewelry		
2019/2020	2020/2021	Change
15,142	3,533	-77%

Child Pornography		
2019/2020	2020/2021	Change
295	94	-68%

Firearms		
2019/2020	2020/2021	Change
753	548	-27%

Firearms include non-restricted, restricted, and prohibited firearms.

Alcohol		
2019/2020	2020/2021	Change
14,209 litres	12,631 litres	-11%

Suspected Proceeds of Crime		
2019/2020	2020/2021	Change
$3,527,776	$3,383,647	-4%

Currency		
2019/2020	2020/2021	Change
$27,493,051	$10,009,100	-64%

Prohibited Weapons		
2019/2020	2020/2021	Change
18,966	51,910	+174%

Total Seizures		
2019/2020	2020/2021	Change
51,728	75,291	+46%

On June 30, 2020 officers at North Portal, Saskatchewan referred a United States resident in transit to Alaska for further examination. They conducted a search and seized the following items: a prohibited; .45-calibre pistol; a prohibited 9mm pistol; a .22-calibre rifle; a 12 gauge shotgun; two prohibited pistol crossbows; a prohibited airsoft replica firearm; a prohibited stun gun; a prohibited switchblade; and a prohibited magazine. Source: News Release

ENTRAPMENT

MERELY 'PLACING A POTENTIAL VICTIM IN AN ACCUSED's LINE OF VISION' NOT ENTRAPMENT

R. v. Ghotra, 2021 SCC 12

An undercover police officer working in an Internet Child Exploitation (ICE) unit created a Yahoo Messenger account with the username **"mia_aqt98"** in an adult chat room. **"Mia"** was used to indicate that she was female, **"aqt"** meant **"a cutie"**, and **"98"** suggested a year of birth of 1998, which indicated an age of 14 years. The public profile, which was visible to other users, displayed the name as Mia Andrews, age 19, born November 10, 1993. The officer logged into a chat room called "Toronto Global Chat 1" in which the accused was already logged in. The accused received an automatic notification that mia_aqt98 had logged in and was now present in the chat room.

The accused initiated a private conversation, outside the chat room, with **"hi"** and **"asl?"** - **"asl"** meaning age, sex, and location. Mia_aqt98 answered, **"14"**, **"f"** and **"brampton"** (meaning 14 years old, female, and living in Brampton). The accused asked if Mia wanted to go to a movie, and Mia declined, saying **"i dont even kno u"** and **"i nvr chilled wit an older boy b4"**. The accused said he was a medical student, had his own car, and lived on his own. Mia asked the accused if he saw that she was 14. He replied **"yeah yeah. thats cool"** and **"we can be friends"**. The accused turned the conversation explicitly sexual and, over the next few days, continued with themes of masturbation and pornography. Eventually, the accused asked to meet Mia. She agreed to meet him at her apartment the next day. After further text communications, the accused said he would meet Mia in the lobby. When he arrived he was arrested by police.

Ontario Superior Court of Justice

The accused acknowledged his participation in the chats, but claimed that he believed he was communicating with an adult engaged in role-playing. He testified that he had no intention of engaging in sexual activity with someone underage. The judge rejected the accused's evidence and convicted him of child luring under s. 172.1(1)(b) of the *Criminal Code*.

The accused then sought a stay of proceedings on the basis that he was entrapped. In his view, the police officer lacked the necessary grounds to offer him the opportunity to commit the offence by posing as a 14-year-old girl. The judge dismissed the entrapment application. He found the officer did not "offer an opportunity" for the accused to commit the offence. The judge noted the accused initiated the conversation with Mia, asked her age and, after being repeatedly told Mia was 14, turned the conversation to sexual inquiries. Further, even if there was an opportunity offered, the judge found it was made in the course of a *bona fide* investigation. In his view, ***"[t]he internet chat room was a place where internet luring was likely occurring"***. The accused was sentenced to six months in custody.

Ontario Court of Appeal

The accused argued the trial judge erred in concluding that the officer did not provide an opportunity to commit an offence. In his view, a broad approach of providing an opportunity to commit an offence should be adopted such that providing the mere chance for a person to commit an offence would amount to entrapment. For this case, the accused suggested he was provided an opportunity to commit the offence of luring a 14-year-old girl once he was confronted with a 14-year-old girl in a place where he wouldn't expect to meet a 14-year-old girl.

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Entrapment

Justice Miller, delivering the majority opinion of the Court of Appeal, first reviewed the law of entrapment. In doing so, the following principles were noted:

- ***"The defence of entrapment flows from the doctrine of abuse of process. It is not a substantive defence to allegations of criminal wrongdoing, but instead allows for a conviction to be stayed where the investigative conduct of the police was exploitative or corrupting."*** (para. 16)
- An accused must establish entrapment on a balance of probabilities.
- Entrapment can occur in two ways:
  - ➡ The police provide a person with an opportunity to commit an offence <u>without acting on a reasonable suspicion</u> that the person is already engaged in criminal activity or pursuant to a *bona fide* inquiry.
  - ➡ Although having a reasonable suspicion or acting in the course of a *bona fide* inquiry, the police go beyond providing an opportunity and <u>induce the commission of an offence</u>.

In this case, the accused did not allege that the police acted in a way to induce him to commit an offence. Nor did the police have an individualized reasonable suspicion that the accused was engaged in criminal activity when the officer responded to his **"asl?"** question. Instead, Justice Miller determined the outcome of the accused's appeal turned on whether the police provided him with an opportunity to commit an offence.

Investigation v. Opportunity?

"Much of the entrapment case law focuses on the distinction between presenting an individual with an opportunity to commit an offence, and merely taking a step in investigating criminal activity," said Justice Miller. ***"The former is entrapment unless the police first have reasonable suspicion. The latter is permissible police conduct."***

Justice Miller noted that it is sometimes difficult to determine what constitutes an opportunity to commit an offence and what is simply a step in investigating criminal activity. However, ***"the analysis often [focusses] on whether the police or the accused took the initiative in the interaction and when".*** As well, ***"'providing an opportunity' excludes investigative techniques where the originating criminal spark comes from the accused."***

Here, the accused's broad conception of providing an opportunity was rejected. ***"Providing an opportunity is not established by but-for causation – that but for the presence of the investigating officer posing as a 14-year-old girl, the [accused] would not have had the opportunity to commit the offence,"*** said Justice Miller. He continued:

> ... In this case, the offence was not in talking with a 14-year-old girl. The offence was communicating with a child for the purposes of committing an offence, such as sexual touching. The [accused's] argument could only succeed, it seems to me, in a world where any 14-year-old girl who agrees to chat on-line with an adult male in a general interest chat room thereby communicates that she is potentially receptive to a sexual encounter. That is not our world."
>
> Accordingly, I do not agree that the trial judge committed any error. Where, as here, the police conduct is nothing other than placing a potential victim in an accused's line of vision,

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> and where the accused is given no reason to believe that the victim would be a willing participant in the offence committed, the police have not provided an opportunity to commit an offence. It was the [accused] who initiated contact with the undercover officer masquerading as a 14-year-old girl. It was the [accused] who sought to ascertain her age. Having learned that she was underage, it was the [accused] who ventured into sexual topics and suggested an in-person meeting. Throughout these interactions, the undercover officer repeatedly raised the issue of the fictional victim's youth, but the [accused] persisted. [paras. 30-31]

Since the police did not provide the accused with an opportunity to commit an offence, it was unnecessary to decide whether there was a *bona fide* investigation. The majority dismissed the accused's appeal.

A Different View

Justice Nordheimer, in dissent, would have allowed the accused's appeal on the basis that the accused was entrapped. He found the officer did provide the accused an opportunity to commit an offence by adopting the user name **"mia_aqt98"** for the purpose of inviting or enticing those in an adult-only chat room not devoted to sexual interests or sexual activities. ***"In my view, the officer in this case created a situation that is no different in kind than the example of offering a wallet,"*** said Justice Nordheimer. ***"In this case, the officer was the wallet. She acted as a lure. She wanted to see if someone would take the bait and the [accused] did. She provided the opportunity. Any other conclusion does not align with the reality of the situation."***

Having found the officer provided the opportunity to commit an offence, Justice Nordheimer concluded that the officer did not have a reasonable suspicion that the accused was already engaged in criminal activity, nor was she acting pursuant to a *bona fide* investigation (she did not have a reasonable suspicion that the location was a source of criminal activity). The police did not offer any evidence that the chat room was a location suspected of child luring. Therefore, the police were engaged in random virtue testing when the opportunity was provided. Justice Nordheimer would have set aside the conviction and entered a stay of proceedings.

Supreme Court of Canada

The accused again argued, in part, that he had been provided an opportunity to commit an offence when the undercover officer informed him she was a 14-year-old female in the adult chat room. This, he claimed, was done in the absence of any suspicion and therefore amounted to entrapment. In a short oral judgement, a seven member panel of the Supreme Court dismissed the accused's appeal for the reasons of Justice Miller in the Ontario Court of Appeal.

Complete case available at www.scc-csc.ca

Editor's Note: Additional details taken from *R. v. Ghotra*, 2020 ONCA 373, available at www.ontariocourts.on.ca

"Where ... the police conduct is nothing other than placing a potential victim in an accused's line of vision, and where the accused is given no reason to believe that the victim would be a willing participant in the offence committed, the police have not provided an opportunity to commit an offence."

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PRIOR EXPERIENCE WITH WEBSITE PROVIDED REASONABLE SUSPICION

R. v. Brown, 2021 NLCA 27

A police officer created a fictional profile of a young female and placed an ad (titled **"New to this scene"**) on the website NLAdult.com. The ad was posted in an area of **"I am a woman seeking a man"** and the description stated, **"Teen girl involved in dance and cheer, long legs lean body can't host"**. The account was set up using the name **"Madison Dohey"** with a fictitious email address. There was no requirement to post an age and a photo found on the internet was used by the officer. This photo depicted a girl in bra and panties with the head cut out. The officer had used NLAdult.com five to 10 times for the same purpose, and had also used sites called Backpages, Craigslist and other Apps in the past.

Shortly after posting the ad, the officer received 10 responses to it. He responded by saying Madison was 15. Five people either did not respond or said too young. One person sent emails back, and further emails were exchanged. Email exchanges continued for about five days in which the officer reiterated Madison was 15. Despite this, the accused continued communications with Madison, suggesting she get naked, provide him with a "bj", and have intercourse. The accused also sent Madison a picture of his penis and asked her for a picture of her breasts, vaginal area and buttocks. Also discussed was payment of money for sexual activities and the accused made a number of attempts to set up a meeting. The accused provided his cell phone number which the officer used to obtain a production order and identify him as the person police were communicating with. The police contacted the accused and he was subsequently interviewed and arrested.

Newfoundland & Labrador Provincial Court

The judge convicted the accused on three counts of child luring under s. 172.1(1) of the *Criminal Code:* for the purpose of facilitating the commission of possessing child pornography (s. 163.1), invitation to sexual touching (s. 152), and sexual assault (s. 271). Once convicted, the accused sought a stay of proceedings on the basis that he was entrapped by the undercover police officer who created the fictional girl on the website.

The judge, however, concluded that the officer was acting pursuant to a *bona fide* inquiry. The officer had used the website previously to investigate whether there was contact with underage persons for sexual purposes and these investigations had resulted in the laying of criminal charges.

Newfoundland & Labrador Court of Appeal

The accused argued the trial judge erred in concluding that the undercover police officer had the necessary reasonable suspicion to ground a *bona fide* investigation when he offered the accused an opportunity to commit the offence.

Entrapment

Justice Welsh, speaking for the Court of Appeal, first noted the following aspects of the entrapment doctrine:

- The onus is on the accused to establish entrapment on a balance of probabilities.
- The defence of entrapment flows from the doctrine of abuse of process.

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- Entrapment is not a substantive defence to allegations of criminal wrongdoing, but instead allows for a conviction to be stayed where the investigative conduct of the police was exploitative or corrupting.
- There are two principal categories of entrapment:
  - ➡ The police provide a person with an opportunity to commit an offence without acting on a reasonable suspicion that the person is already engaged in criminal activity or pursuant to a *bona fide* inquiry; or
  - ➡ Although having such a reasonable suspicion or acting in the course of a *bona fide* inquiry, the police go beyond providing an opportunity and induce the commission of an offence.

In using technology to conduct an investigation, Justice Welsh recognized that ***"care must be taken in defining the scope of the investigation"***:

> An inquiry to ensure that the police have sufficiently narrowed the scope of their clandestine operation may involve consideration of factors such as: "the seriousness of the crime in question; the time of day and the number of activities and persons who might be affected; ... the level of privacy expected in the area or space; the importance of the virtual space to freedom of expression; and the availability of other, less intrusive investigative techniques" . [reference omitted, para. 11]

In this case, the Court of Appeal agreed with the trial judge that the undercover officer was acting pursuant to a *bona fide* investigation at a location where the police reasonably suspected child luring activity was taking place:

> ... It is self evident that child luring is a serious crime. Young people are adept at accessing technology and must be protected from those who would take advantage of their immaturity, naivety and curiosity. The potential for serious harm to the child cannot be understated.
>
> A website such as NLAdult.com does not engender an expectation of privacy such as would apply, for example, to texting between two friends. The undercover officer posted the fictional information on the portion of the website entitled "I am a woman seeking a man". The obvious purpose is to facilitate telecommunication between strangers.
>
> In this case, the undercover officer was quick to advise that Madison was 15 years old. Once this was made known to the ten individuals who had responded to the initial posting, several either responded that she was too young, or did not respond. [The accused], on the other hand, indicated his quite keen interest, despite knowing Madison's age.
>
> The telecommunications between the undercover officer and [the accused] did not engage freedom of expression considerations. Further, other less intrusive investigative techniques are not available to the police. This is a crime committed using electronic means. The particular website, NLAdult.com, under the category, "I am a woman seeking a man", delineates and circumscribes the location targeted by the undercover operation. [paras. 14-17]

"It is self evident that child luring is a serious crime. Young people are adept at accessing technology and must be protected from those who would take advantage of their immaturity, naivety and curiosity. The potential for serious harm to the child cannot be understated."

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As for reasonable suspicion, ***"the undercover officer explained why he had a legitimate, reasonable suspicion that child luring was occurring on the identified website"***:

> Each investigation must be assessed on its own facts. In this case, the fact that communications on this particular site had led to child luring charges in the past was a valid basis on which the trial judge found the necessary reasonable suspicion to ground the undercover investigation. The Crown is not required to reach back to validate the rationale that led to the first charge on the targeted location, as suggested by [the accused].
>
> ... [T]he accused initiated the communication with Madison who immediately raised the issue of her age, which she reiterated in other communications, giving [the accused] the opportunity to cease further communication. Rather than withdrawing, knowing her age, he pursued sexual inquiries and a suggestion that they meet. [para. 19-20]

The Court of Appeal found a reasonable suspicion, had been established by objectively discernable facts to ground the investigation. The police were acting in the course of a *bona fide* inquiry when they provided the accused with the opportunity to commit the office. Thus, there was no entrapment. The accused's appeal was dismissed.

Complete case available at www.canlii.org

Editor's Note: Addition details taken from *R. v. Brown*, [2020] N.J. No. 27 and *R. v. Brown*, [2020] N.J. No. 297.

POLICE AND PEACE OFFICERS' NATIONAL MEMORIAL DAY
September 26, 2021

BONA FIDE INQUIRY REQUIRES VIRTUAL SPACE BE SUFFICIENTLY PRECISE & NARROW

R. v. Ramelson, 2021 ONCA 328

As part of a police undercover operation designed to address the sale of sexual services of children (Project Raphael), the police posted a fake advertisement pretending to be a young girl in the **"escorts"** section of the online classified website called Backpage. This section expressly advertised sexual services. The ad was purportedly posted by **"Michelle"**, aged 18-years-old, the minimum age required by Backpage. Michelle described herself as a **"Tight Brand NEW girl"**, **"sexy and YOUNG"** and who had a **"YOUNG friend"**. The ad included three photographs of a female police officer posing as Michelle without her face shown. In one photograph the officer was wearing a t-shirt with the name of a local high school printed on it.

The accused responded to the ad and a series of text message were exchanged, including the following between the accused and the officer:

Officer:	**Just so you know we under 18. Some guys freak out and I don't want problems. We are small and it's obvious.**
Accused:	**I'm cool with it. I'll be gentle as long as you're sexy and willing.**
Officer:	**We are both willing. We're 14 but will both be turning 15 this year. That cool? We are buddies and very flexable??**
Accused:	**Should be lots of fun.**
Accused:	**Can you girls dress up for me.**
Officer:	**I'm 14 I got regular clothed and my bra and underwear.**

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The chat continued and the police provided a hotel address and room number to the accused. He went to the hotel and was arrested when he arrived at the room. He was charged under the *Criminal Code* with child luring under 16 (s. 172.1(2)), communicating to obtain sexual services from a minor (s. 286.1(2)), and arranging to commit sexual offences against a person under 16 (s. 172.2 (2)).

Ontario Superior Court of Justice

After being convicted of all three charges, the accused applied for a stay of proceedings based on entrapment. Although the judge concluded ***"the police had a reasonable basis to believe that individuals were involved in the purchase of sexual services from juvenile prostitutes on Backpage.com"***, he went on to conclude the scope of the virtual space being investigated was too broad to allow the investigation to qualify as a *bona fide* inquiry. Since the inquiry was not *bona fide*, the judge reasoned that the police required a reasonable suspicion that the accused himself was involved in the criminal activity under investigation before they could offer him the opportunity to engage an underage person. The judge found that the accused had said nothing to suggest he was looking for an underage person before the police had invited him to commit the offence. As a result, the police entrapped the accused and a stay of proceedings was ordered.

Ontario Court of Appeal

The Crown argued the trial judge erred in finding that the accused had been entrapped. The accused, on the other hand, submitted (in part) that there was insufficient evidence to give the police a reasonable suspicion that persons were going onto Backpage seeking to engage the sexual services of underage persons. In addition, he contended that the police virtue tested far too many innocent people to meet the requirement that the investigation was undertaken in a precisely and narrowly defined space.

Entrapment

Justice Juriansz, speaking for the Court of Appeal, first explained the entrapment doctrine:

- ***"Entrapment is not a true defence, as the accused has committed the crime and is properly found guilty. The remedy for entrapment is a stay of proceedings. Entrapment is a type of abuse of process."*** [para. 18]
- ***"Entrapment seeks to balance two competing interests: the individual has an interest in being left alone free from state intrusion, and the state has an interest in protecting society from crime."*** [para. 19]
- There are two branches to the entrapment doctrine:
  - ➡ **Opportunity Based Entrapment:** The authorities provide a person with an opportunity to commit an offence <u>without acting on a reasonable suspicion</u> that the person is already engaged in criminal activity before providing the opportunity or without acting pursuant to a *bona fide* inquiry (no reasonable suspicion that the location with which the person is associated is a place where the particular criminal activity is likely occurring).
  - ➡ **Inducement Based Entrapment:** Although having such a reasonable suspicion or acting in the course of a *bona fide* inquiry, they go beyond providing an opportunity and <u>*induce the commission of an offence.*</u>
- Entrapment applies in virtual spaces. ***"A bona fide inquiry requires that the police have the genuine purpose of investigating and repressing crime, that the police have objectively verifiable reasonable suspicion that people are***

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engaged in the criminal activity within the space, that the space being investigated is sufficiently precise and narrow, and finally, that consideration of an open-ended list of factors enables the court to conclude that random virtue testing was avoided." [para. 36]

Reasonable Suspicion

"Reasonable suspicion that the criminal activity is occurring in the space being investigated is an absolute requirement", said Justice Jurainsz. ***"Reasonable suspicion must be supported by objective factors"***. In terms of a *bona fide* inquiry, the police must have a reasonable suspicion that people are carrying out criminal activity in that place. In the case of a virtual space, the space must be precisely defined and the investigation's breadth narrowly defined. Citing *R. v. Ahmad*, 2020 SCC 1, the Court of Appeal outlined the following factors for determining whether a virtual space had been defined with sufficient precision to ground reasonable suspicion and to ensure random virtue testing was avoided:

- the seriousness of the crime in question;
- the time of day and the number of activities and persons who might be affected;
- whether racial profiling, stereotyping or reliance on vulnerabilities played a part in the selection of the location;
- the level of privacy expected in the area or space;
- the importance of the virtual space to freedom of expression; and
- the availability of other, less intrusive investigative techniques.

In addition, reasonable suspicion can be obtained in the course of the investigation but prior to providing a suspect with the opportunity to commit a crime.

Reasonable Suspicion & Backpage

Justice Jurainsz concluded the evidence established that the police had a reasonable suspicion that some customers were going onto Backpage and communicating to obtain sexual services for consideration from persons they knew or believed to be under the age of 18 (s. 286.1(2) *Criminal Code*). The architect of Project Raphael testified that persons were going onto Backpage seeking to engage the services of underage escorts. His extensive experience formed the foundation for a specialized knowledge on the subject. His experience included:

- dealing with prostitutes, pimps, and purchasers of sex on an almost daily basis for eight years;
- interviewing hundreds of "girls" involved in the sex trade, both juveniles and adults;
- dealing with adult escorts who were recruited into the sex trade when they were children;
- meeting with "survivor based organizations"; and
- attending conferences in the United States and Canada with respect to juvenile prostitution at which case studies involving underage children being advertised on Backpage were presented.

The officer also introduced some data from the area which included police identifying 85 of 427 persons working in the sex industry as underage.

A Bona Fide Inquiry?

The trial judge did not accept that the police were acting pursuant to a *bona fide* inquiry because the virtual space being investigated was too broad. The trial judge had found that the overwhelming majority of ads and traffic in the escort section of Backpage did not relate to men seeking sexual services from underage girls and that *"most males contacting the ad were looking for a female who was not underage"*. Although ***"it was proper and necessary for the trial judge to consider the***

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number of innocent people in the virtual space being investigated who would have their virtue tested by the police", the trial judge failed to consider other relevant factors. Justice Jurainsz proceeded to consider other important factors in determining whether unacceptable random virtue testing occurred in this case:

- **The targeted criminal activity was serious:**
  - ➡ ***"Obtaining the sexual services of a juvenile for consideration is an extremely grave crime".***
- **Child prostitution is difficult to investigate, and less intrusive investigative techniques were not available.**
- **The police narrowed the scope of the investigation as much as the evidence warranted:**
  - ➡ ***"[T]he police had reasonable suspicion persons were going on the escort section of Backpage to seek the sexual services of underage persons. The escort section of Backpage is the virtual space to which reasonable suspicion attaches. The escort section of Backpage is a precisely defined virtual space. Whether the police have acted within or outside that virtual space can be determined easily and definitely."***
  - ➡ ***"The police narrowed the scope of the investigation to only the users who responded to their ads, which offered escorts' sexual services in the York Region, and which emphasized the escorts' youthfulness by stating their age to be 18 and describing them in terms that the police intended 'to hint at the fact that the purchaser could be purchasing a young girl or child'."***
  - ➡ ***"That 'the overwhelming majority' of ads and traffic on the escorts section of Backpage did not relate to the sexual services of underage persons must be considered together with the narrowed scope of the investigation. The police did not offer the services of underage persons to users of the escorts section of Backpage in general. The people who clicked on the police ads to see the ad's full content and then responded to the ads were the only persons who could be offered an opportunity to engage the sexual services of someone underage."***
  - ➡ ***"[C]ustomers who are merely indifferent that the 18-year-old they seek to engage may actually be an underage person are legitimate targets of the police investigation. Their indifference exhibited in responding to police offers would manifest itself equally in real life encounters. These indifferent persons add to the social evil of child prostitution by contributing to the market for it."***
- **The activities affected by the investigation:**
  - ***"[A]ll the persons who possibly could be tested by the police were persons seeking to engage prostitutes. The persons who responded to the police ads, and other similar ads, were engaged in communicating to obtain for consideration the sexual services of a person, which is a criminal offence under s. 286.1. The communication to obtain sexual services for consideration is the single activity affected by the investigation."***
  - ***"Society has little interest in shielding the criminal activity of engaging a prostitute from state intrusion."***
- **The nature and level of privacy expected in the virtual space.**
  - ➡ ***"The police carrying out Project Raphael intruded upon an intensely personal privacy interest."***
  - ➡ ***"I expect that customers would want to keep their text messages with a prospective sex worker confidential. In such text messages***

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customers would disclose their sexual predilections, the sexual activities in which they wanted to engage, and how much they were willing to pay for them.

- **The importance of the virtual space to freedom of expression:**
  - ➡ ***"The escorts section of Backpage had little importance to freedom of expression."***
  - ➡ ***"The virtual space the police intruded upon was comprised of advertisements for sexual services and text messages from would-be customers. The expression in this space was devoted to specifying sexual services and negotiating their cost and where they would be performed. Such expression does not fall into the traditional categories of expression valued in a democratic state, such as political speech, social commentary, or religious opinion."***
  - ➡ ***"While the customers could claim a privacy interest in their text messages, it is relevant to this factor that the expression by the customers in the virtual space, i.e. communicating to obtain sexual services for consideration, would constitute a criminal offence under s. 286.1."***

- **Racial profiling, stereotyping or reliance on vulnerabilities:**
  - ➡ ***"There was no latitude in Project Raphael for undercover officers to engage in racial profiling or stereotyping, or to rely on vulnerabilities not related to the offence."***

- **The number of persons affected:**
  - ➡ ***"[A] considerable majority of the persons who responded to the police ads refused to engage the sexual services of a juvenile when offered the opportunity to do so.***
  - ➡ ***"That a considerable majority of men who responded to the ad disengaged when the undercover officer disclosed 'her' age is not determinative on its own."***

After considering all the circumstances of the case in determining whether the space within the scope of the investigation was sufficiently precisely and narrowly defined, Justice Jurainsz concluded:

> The factors, the seriousness of the crime, and the difficulty of investigating it, weigh heavily in favour of finding random virtue testing was avoided. The invasion of intensely personal privacy interests and the number of innocent persons affected support the opposite conclusion. The police investigation intruded only on persons engaged in criminal activity and in a virtual space that has little or no value to freedom of expression. There is no less intrusive investigative technique available. There is no suggestion of racial profiling, stereotyping or reliance on vulnerabilities in the design or implementation of the investigation.
>
> Considering the above factors, all the circumstances and the applicable principles, I conclude that Project Raphael was a bona fide police inquiry and that the police did not require reasonable suspicion that the person responding to the ad was seeking someone underage before extending offers to commit the offence of communicating to obtain for consideration the sexual services of an underage person. In the course of the investigation the police necessarily provided persons with the opportunity to commit the rationally connected and proportionate offence of communicating with a person they believed to be underage to facilitate sexual contact with them. ... [paras. 147-148]

The accused was not entrapped. The Crown's appeal was allowed, the order staying the accused's convictions was set aside and the matter was remitted back to the trial judge for sentencing.

Complete case available at www.ontariocourts.ca

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POLICE CAN FORM REASONABLE SUSPICION DURING COURSE OF CALL

R. v. Bank; R. v. Yip, 2021 ABCA 223

The police, in two cases heard before the Alberta Court of Appeal, relied (in part) on Crime Stoppers tips to call a phone number and make arrangements to purchase drugs. In both cases, the accuseds brought entrapment applications following their convictions.

R. v. Bank: A police officer received a tip through Crime Stoppers that a person named Prince was selling cocaine from two telephone numbers (one ending in 5888 and the other in 7811). These numbers were checked through police databases which revealed "Sacha Bank" used the 5888 number in a complaint he made that his car had been stolen while the second number was associated to a person named "Prince" as a suspect in a home break-in involving the theft of firearms.

The officer considered that the break-in result corroborated that a person named Prince using the number existed. The officer believed he had a reasonable suspicion regarding the numbers in the tip and asked an undercover operator to contact one of the two numbers in the tip – chosen at random – to purchase a controlled substance.

The undercover operator sent a text message to the 5888 number:

Operator	**Hey Bro, is it snowing in Calgary?**
5888	**Who's this?**
Operator	**Chris Mann, can you do a ball?**

The person called the undercover opertor and explained he had no cocaine but only weed for sale. He said he did know someone who sold cocaine and could arrange for that person to contact the operator. About a month later, a series of text exchanges occurred between the number and the undercover operator discussing the purchase of drugs. Following an exchange where a personal phone number was provided by the suspect, the officer called the number and arranged to meet. The undercover operator met with Bank on five occasions, purchasing a total of **9.1 grams of cocaine**.

Alberta Provincial Court

Bank plead guilty to five counts of cocaine trafficking but argued he had been entrapped when the undercover operator first called the number and asked, ***"Can you do a ball?"*** He suggested that the opportunity to sell drugs had been provided without the police yet having a reasonable suspicion. The judge, however, found there was no entrapment. She concluded the police had reasonable suspicion before the undercover operator contacted the numbers received in the Crime Stoppers' tip. The investigating officer had made efforts to corroborate the tip before utilizing the undercover operator. In addition to the Crime Stoppers tip, the officer corroborated some of the information which was sufficient to meet the reasonable suspicion standard before any phone calls were made by police. ***"The information available to police was compelling, credible, and corroborated to a sufficient degree to avoid the possibility of enticing an innocent person to commit a crime they would not otherwise commit,"*** said the judge.

In addition, the judge ruled that the police were acting pursuant to a *bona fide* investigation based upon reasonable suspicion. In her view, the undercover operator's initial request, ***"Could you do a ball?"***, was not an opportunity to commit a crime but an investigative step taken to determine whether the phone line was attached to someone involved in the sale of drugs. The opportunity to commit a crime took place later after the seller

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inquired about a meet. ***"The police investigation in this case was properly founded on reasonable suspicion that the accused was already engaged in criminal activity and was also part of a bona fide inquiry,"*** said the judge.

R. v. Yip: The police received a Crime Stoppers tip that included information that Yip was trafficking in cocaine, used the first name Jason, used a specific phone number, and delivered the drugs in a vehicle. An officer believed there was reasonable suspicion that the phone number was used in drug activity and asked an undercover operator to contact the number and arrange to purchase drugs. No information other than the phone number was provided to the undercover operator.

The undercover operator called the number but there was no answer. Then the following text message conversation occurred:

Operator	**Working tonight?**
Male	**Who's this?**
Operator	**Lexi.**
Male	**Who?**
Operator	**Lexi.**
Male	**Where have we met?**
Operator	**Can we meet tonight?**
Male	**How did you get my number?**
Operator	**TJ.**
Male	**Who's TJ?**
Operator	**He had your number.**
Male	**What's his phone number?**
Operator	**[provided number]**
Male	**I don't know your buddy, TJ.**
Operator	**Please, Dude, it's St. Paddy's.**
Male	**Don't even know your buddy.**
Operator	**So?**
Male	**Where are you?**
Operator	**I got wheels so I can move. Where are you at?**
Male	**How many you need?**
Operator	**Four. How much should I bring?**
Male	**240**

The undercover operator arranged a meeting and purchased cocaine from the accused Yip, who identified himself as Jason. The undercover officer met with Yip on five occasions, purchasing a total of **10.5 grams of cocaine**.

Alberta Court of Queen's Bench

After pleading guilty to five counts of trafficking, Yip applied for a stay of proceedings on the basis that he was entrapped. He argued the police did not have a reasonable suspicion before making the phone call. And, even if the call was made as part of a *bona fide* inquiry, reasonable suspicion did not arise in the course of the call before the police presented an opportunity to commit a crime.

The judge found Yip had not been entrapped. In her view, the questions ***"Can we meet"*** and ***"Please, Dude"*** were simply steps in the investigation of the tip, and asking ***"Can we meet"*** did not amount to giving Yip the opportunity to traffic in drugs. She concluded police had a reasonable suspicion Yip was engaged in drug trafficking and the conversation prior to the question, ***"How many you need"***, was investigative.

ENTRAPMENT

"The police do not entrap an offender if at the time they provide the offender with an opportunity to commit a crime that was the immediate and primary cause of the crime for which the accused is convicted they have reasonable suspicion to believe that the offender may be engaged in criminal conduct or that criminal acts are taking place at a specific location."

Alberta Court of Appeal

Bank submitted the Crime Stoppers' tip, either alone or as corroborated by the police database searches, did not support a reasonable suspicion that the user of the phone number was involved in drug trafficking before offering him the opportunity to commit a crime. Furthermore, Bank argued there was no reasonable suspicion that the phone number provided was involved in criminal activity and therefore, even if a phone number could be viewed as a physical location that the police investigate, it was not part of a *bona fide* inquiry.

Yip contended the police could not develop a reasonable suspicion during a call. He suggested reasonable suspicion must exist before the police provide the opportunity to commit a crime and, in his opinion, the police presented the opportunity to commit a crime at the outset of the telephone exchange. He asserted the purpose of the call was not to investigate but to purchase drugs.

Entrapment

In a lengthy judgment, the majority of the Court of Appeal reviewed the law of entrapment. In addition to examining other common law jurisdictions and its history in Canada, Justice Wakeling and Schutz made the following comments:

- ***"The police can form a reasonable suspicion in the course of a phone call."*** [para. 10]
- ***"The police do not entrap an offender if at the time they provide the offender with an opportunity to commit a crime that was the immediate and primary cause of the crime for which the accused is convicted they have reasonable suspicion to believe that the offender may be engaged in criminal conduct or that criminal acts are taking place at a specific location."*** [para. 3]
- ***"In Canada entrapment exists if an accused proves on a balance of probabilities facts that establish a member or agent of a law enforcement service provided the accused with an opportunity to commit a crime that was the immediate and primary cause of the crime for which the accused is convicted without having a reasonable suspicion that the accused is engaged in criminal activity or that criminal acts are taking place at a specific location."*** [para. 72]
- ***"[A] court may stay criminal proceedings against an accused who has committed a crime if, at the time the police officer provided the accused with an opportunity to commit a crime, the police officer had no reasonable suspicion that the accused has committed a crime or the targeted area is in a high crime zone."*** [para. 100]

"[A] court may stay criminal proceedings against an accused who has committed a crime if, at the time the police officer provided the accused with an opportunity to commit a crime, the police officer had no reasonable suspicion that the accused has committed a crime or the targeted area is in a high crime zone."

ENTRAPMENT

"The reasonable suspicion standard requires a lesser degree of certainty with respect to the commission of a crime than a police officer must have to make a warrantless arrest."

Reasonable Suspicion

In discussing the concept of reasonable suspicion, the majority made the following observations:

- *"The reasonable suspicion standard requires a lesser degree of certainty with respect to the commission of a crime than a police officer must have to make a warrantless arrest."* [para. 103]
- *"Reasonable suspicion is the least onerous standard known in the criminal law."* [para. 103]
- *"A peace officer may not arrest a person without warrant unless he has reasonable and probable grounds to believe that the arrestee has committed an indictable offence. This standard utilizes a degree of certainty less than the more-likely-than-not civil adjudication marker but greater than the degree of certainty associated with a reasonable suspicion. Reasonable suspicion is the lowest degree of certainty the criminal law utilizes."* [para. 106]
- *"The fact that the police officer could easily have been wrong is irrelevant. With a standard as low as reasonable suspicion there can be many false positives."* [para. 108]
- *"There is a significant difference between the two lesser degrees of certainty – reasonable suspicion and reasonable and probable grounds. One measures mere possibilities. The other tracks outcomes that are much more likely to occur. There is a world of differences between the two."* [para. 110]
- *"[B]oth the reasonable suspicion and reasonable and probable grounds standards share two common features. First, both reasonable and probable grounds and reasonable suspicion are objective standards. The presence of the adjective 'reasonable' does not affect the degree of certainty associated with the noun the adjective describes. It simply requires a statement of the facts that justifies the claim that the standard has been met. An objective standard allows for 'meaningful judicial oversight'. Second, courts monitoring the presence of both standards must take into account the police officer's perception of the data he or she is processing."* [paras. 111-113]
- *"When police are investigating a virtual space – like a website message board or a phone number – the suspicion may attach to either a person or that virtual space. The space must be narrowly defined. A specific phone number is sufficiently precise and narrow to qualify as a location to which reasonable suspicion can attach, though often the number and person using it will be closely related. The question in this context is whether there are 'objective factors supporting a reasonable suspicion of drug trafficking by the individual answering the cell phone when police provide the opportunity to commit … a crime', whether on account of suspicions attached to the phone number, the individual, or both."* [para. 115]

"The fact that the police officer could easily have been wrong is irrelevant. With a standard as low as reasonable suspicion there can be many false positives."

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"When police are investigating a virtual space – like a website message board or a phone number – the suspicion may attach to either a person or that virtual space. The space must be narrowly defined. A specific phone number is sufficiently precise and narrow to qualify as a location to which reasonable suspicion can attach, though often the number and person using it will be closely related."

- ***"In the context of a dial-a-dope investigation – where drugs are sold by phone – the Supreme Court of Canada has held that a bare tip from an unknown source – the person using a phone number is selling drugs – conveys insufficient information to create reasonable suspicion with respect to a person or phone number. But its probative force can escalate to a sufficiently high level if supplemented by the discovery of other facts in the course of a post-tip investigation. Other tips may identify the same number or provide additional information. Or police records may disclose a connection between a number provided by the tipster and criminal activity."*** [para. 116]

- ***"While a bare tip alone does not move the needle far enough to constitute reasonable suspicion, a bare tip does move the needle closer to the reasonable suspicion standard. A bare tip provides the police with a higher degree of certainty that criminal activity is taking place using the phone number as a tool than the police would have without the tip."*** [para. 128]

- ***"If a law enforcement service member or agent is unable to independently collect data that meets the reasonable suspicion threshold, the member or agent may attempt to secure from the target additional information to reach the modest reasonable-suspicion milestone. But in doing so a police officer must tread carefully. A court will review the language in the call to determine whether reasonable suspicion was made out prior to offering an opportunity to commit a crime that is responded positively to by the target. 'Examining the language used may reveal … the difference between an officer who is investigating whether there is reasonable suspicion of criminal activity through careful attention to the answers received, and an officer who makes no serious attempt to verify a tip of unknown reliability and immediately asks for drugs'."*** [para. 129-130]

- ***"A police officer cannot, without reasonable suspicion, perform an act that immediately and primarily causes the target to commit a crime."*** [para. 139]

Was the accused Bank Entrapped?

No. The majority was satisfied the corroboration of the tip by searching databases prior to initiating contact with the two phone numbers provided a sufficient basis to conclude that there was a reasonable suspicion the numbers were associated with criminal activity. The majority stated:

> The information the police had is as follows. Based on the police record search, the 5888 number belonged to Mr. Bank and, according to the tip, was one of the two numbers used by someone by the name of Prince to sell cocaine. Based on the police record search, the 7811 number was used by Prince, who may have been the perpetrator in a residential break-in and, according to the tip, was one of two numbers that Prince used to sell cocaine.
>
> The information in the database search suggesting Prince and the 7811 number were related and that Prince was involved in criminal activity may be viewed as corroborating the

ENTRAPMENT

> part of the tip that Prince used that number and was involved in criminal activity. And if part of the tip is corroborated, this may enhance the credibility of the remainder of the tip – that Prince also used the 5888 number. Taken as a whole, this suggests the police could have formed a reasonable suspicion that the 5888 number was involved in criminal activity. [paras. 148-149]

And the police did not have to suspect that Bank himself was involved in criminal activity. Since there was a reasonable suspicion relating to the 5888 number, it was permissible to provide an opportunity to sell drugs to whomever used that number. Moreover, this reasonable suspicion rendered the subsequent interactions between police and Bank part of a *bona fide* inquiry allowing police to target individuals associated with the phone number.

Was the accused Yip Entrapped?

No. The majority was satisfied that the police officer instructing the undercover operator to call the number had a reasonable suspicion that the number called was used to sell drugs. The undercover operator himself need not have formed a reasonable suspicion anew. Further, when the undercover operator call the number he ***"did not offer to purchase drugs as much as engage in a conversation that led Mr. Yip himself to offer to sell drugs"***:

> Up until when Mr. Yip asked "How many you need", the operator did no more than use innuendo that a person engaged in selling drugs would understand means that she wants to purchase drugs. She asked to meet, said she got the number from TJ, and when Mr. Yip said he did not know a TJ added "please dude, it's St. Paddy's". Just as Mr. Yip's comments up to that point could admit an innocent explanation, so can the operator's. She did not explicitly ask to purchase a specific quantity of drugs or a specific drug. Rather, Mr. Yip, seemingly content that she is a buyer, asked "How many do you need".
>
> The operator asked no question which Mr. Yip in responding could be said to have committed the offence of offering to traffic drugs. It was Mr. Yip himself who made the offer to sell. ... [para. 168-169]

A Different Take

Justice O'Ferrall, writing a concurring judgement, agreed there was no entrapment. However, he opined that ***"the law of entrapment simply [did] not apply"***:

> These cases were not about the police or the state providing citizens opportunities to commit crimes. Rather they were about police inquiring about tips they had received from unidentified citizens which indicated that phone numbers associated with the [accuseds] were being used to traffic in cocaine. This was nothing more than a police investigation of apparently anonymous Crime Stoppers tips to determine whether the tips were correct. The investigation led to undercover purchases of cocaine from the [accuseds], but the fundamental purpose of the impugned police conduct was to investigate reports of criminal activity. It was not entrapment in the sense of the state or the police inducing the [accuseds] to commit crimes they would not otherwise have committed. [para. 184]

And further:

> Investigation ... involves making inquiries. Investigation may also involve searching, inspecting, detaining and other types of detective work which may be more problematic than simply making inquiries. However, in the cases before us, the investigations were limited to making inquiries. Making inquiries, unlike

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> searches and seizures, do not have the potential to infringe individual liberty or engage privacy concerns. Unlike entrapment, inquiries are not things to be discouraged. They are to be encouraged if they relate to detecting crimes. Reasonable suspicion is not a pre-condition to the police making inquiries. Police may make inquiries based solely on their subjective hunches. They also may make inquiries based on what they believe to be reliable tips. Because investigative work is distinct from entrapment, police inquiries ought not to be governed or handicapped by the law of entrapment. [para. 190]

In Justice O'Ferrall's view, these cases did not involve what he called **"real entrapment"**. ***"What we had were tips from citizens which the police investigated,"*** he said. ***"The tips were that certain phone numbers were being used to facilitate the sale of illicit drugs. The police must be able to take such tips at their face value and investigate. If a citizen thought his or her tip could only be acted upon after some of the details of the tip were investigated and corroborated, or, worse, could only be acted upon after the tipster was investigated, the citizen would be justified in questioning the efficacy of law enforcement."***

Since these were not entrapment cases, an entrapment analysis was not required. He dismissed the appeals as well.

Complete case available at www.canlii.org

In Volume 21 Issue 3 at page 21 the banner for the level of court was identified as the Ontario Court of Appeal when it should have been the Manitoba Court of Appeal.

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All-terrain vehicle fatalities in Canada, 2013 to 2019[1]

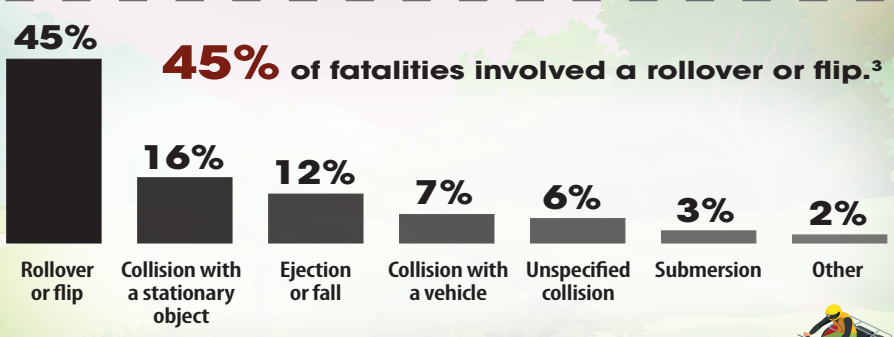
On average, 100 all-terrain vehicle (ATV)[2] fatalities occur every year in Canada.

The vast majority of victims were males. → **85%** Male **15%** Female

ATV fatalities affected all age groups.

12%	26%	21%	24%	16%
Under 20 years	20 to 34 years	35 to 49 years	50 to 64 years	65 years or older

45% of fatalities involved a rollover or flip.[3]



Risk factors[4]

- **Alcohol/drug use** was reported in **51%** of ATV driver fatalities.
- **Road conditions,** such as a dangerous surface, a slope or a curve, were reported in **33%** of ATV fatalities.
- **Not wearing a helmet/not safely wearing a helmet** was reported in **33%** of ATV fatalities.

Notes :
1. The data in this infographic include only ATV fatalities resulting from unintentional injuries.
2. An all-terrain vehicle is defined as a "quad"-type vehicle with four wheels.
3. In 9% of fatalities, the fatal event type was unknown/unspecified.
4. More than one behavioural risk factor may be identified for a single death.

Source: Statistics Canada, Canadian Coroner and Medical Examiner Database, and Canadian Vital Statistics – Death Database.

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Canada

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RANDOM STOP ON PRIVATE PROPERTY UNLAWFUL

R. v. McColman, 2021 ONCA 382

At about 12:30 a.m. police officers on general patrol observed an all terrain vehicle (ATV) parked outside a restaurant and gas station. As it left the parking lot, the officers decided to conduct a sobriety check of its driver. They followed the ATV about 200 meters down a public road where the ATV then turned onto the private driveway of the accused's parents' house. This driveway also provided a means of access to a neighbouring commercial business. The police followed the ATV onto the driveway and turned on their lights.

On approaching the accused, an officer noted he was impaired. The accused was unsteady on his feet and he was hanging on to the side of the ATV. His knees were wobbly, his eyes were red and bloodshot, and there was a strong odour of alcohol on his breath. When asked if he had consumed any alcohol, the accused admitted that he may have had 10 beers.

The accused was arrested for impaired driving and transported to the police station where he provided two breath samples (120mg% and 110mg%). At the station, the accused vomited several times and continued to show signs of intoxication. He was charged with impaired driving and over 80mg%.

Ontario Court of Justice

At trial, police testified they did not see any signs of impairment prior to stopping the accused and agreed there was nothing unusual about his driving. Instead, an officer explained that the stop was a random sobriety check under s. 48(1) of Ontario's *Highway Traffic Act* (*HTA*).

The accused argued, among other things, that the stop was unlawful and therefore amounted to an arbitrary detention under s. 9 of the *Charter* because the stop was conducted on private property. The judge, however, disagreed. In the judge's view, s. 48(1) of the *HTA* provided lawful authority for the stop because the officers intended to stop the accused's vehicle for the purpose of checking the driver's sobriety while the ATV was being operated on a public highway. The police did not breach the accused's right under s. 9 of the *Charter* and the evidence obtained as a result of the stop was admissible. The accused was convicted of impaired driving and operating a motor vehicle over 80mg%. The impaired driving conviction was conditionally stayed on the basis of *R. v. Kienapple, [1975] 1 SCR 729*. The accused was given a 12-month driving prohibition and a $1,000 fine.

BY THE BOOK:

Ontario's Highway Traffic Act

Determining whether to make a demand

s. 48(1) A police officer, readily identifiable as such, may require the driver of a motor vehicle to stop for the purpose of determining whether or not there is evidence to justify making a demand under section 320.27 or 320.28 [then section 254] of the Criminal Code.

Ontario Superior Court of Justice

The accused argued, in part, that the trial judge erred in finding that a police officer could conduct a sobriety stop on private property under s. 48(1) of the *HTA*. The appeal judge agreed, holding that neither ss. 48(1) nor 216(1) of the *HTA* allowed the police to conduct a sobriety or highway safety stop on private property absent reasonable and probable grounds. Once the accused's vehicle left the public roadway and entered the private driveway, he was no longer a **"driver"** within the meaning of the *HTA* and therefore the police did not have statutory authority to randomly detain him in order to check his sobriety. The appeal judge also concluded that the stop was not authorized under the common law

"Because a private driveway is not a 'highway' for the purposes of the HTA, on the plain language of the HTA, a person in their private driveway cannot be a 'driver' as they are not a 'person who drives a vehicle on a highway'."

police duty to protect the public. Since the stop was unlawful, the accused was arbitrarily detained under s. 9 of the *Charter*. The accused's appeal was allowed, the evidence resulting from the stop was excluded under s. 24(2), the conviction was set aside and an acquittal was entered.

Ontario Court of Appeal

The Crown challenged the appeal judge's decision, submitting that he erred in finding neither s. 48(1) nor the common law authorized the sobriety stop in this case and, even if there was *Charter* breach, the evidence should not have been excluded.

Statutory Authority: s. 48(1) of HTA?

Justice Tulloch, authoring the majority opinion for the Court of Appeal, agreed s. 48(1) did not authorize the police to stop the accused on the private driveway. For a stop to be lawful under s. 48(1) the following criteria must be met:

1. The police officer must be readily identifiable as a police officer;

2. The person being stopped must be a **"driver"** for the purposes of the HTA; and

3. The purpose of the stop must be to determine whether there is evidence to justify making a demand for a sample of breath or other means of testing the driver's sobriety.

If the above conditions are satisfied, an officer may randomly stop a vehicle absent reasonable suspicion or reasonable and probable grounds.

Section 1(1) of the *HTA* defines a ***"driver"*** as a ***"person who drives a vehicle on a highway."*** A driver ***"includes a person who has care or control of a motor vehicle"*** (s. 48(18)). A ***"highway"*** is further defined as ***"a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for passage of vehicles and includes the area between the lateral property lines thereof."***

In this case, Justice Tulloch found the accused was not a **"driver"** when he was stopped by police on the private driveway. ***"A private driveway is not a highway as defined in the HTA",*** he said. ***"A private driveway is not a 'highway' as it is 'property to which the general public does not have access' and it only has 'a limited purpose other than passage' (i.e., parking). Because a private driveway is not a 'highway' for the purposes of the HTA, on the plain language of the HTA, a person in their private driveway cannot be a 'driver' as they are not a 'person who drives a vehicle on a highway'."***

The fact that the police crystallized the intention to stop the accused for a sobriety check while he was still on a public roadway (and thus a driver at that time) did not authorize the stop occurring on private property:

> ... The issue is whether the police were acting pursuant to lawful authority at the moment when they conducted the stop. That authority must be exercised within the confines stipulated by the HTA, including the precondition that the person subject to the stop is a "driver" on a "highway". The officers' intentions in the moments preceding the stop

> do not render an otherwise unlawful stop lawful.
>
> ... [T]he plain language of s. 48(1) and the related definitions of "driver" and "highway" do not authorize random stops off the highway. [paras. 37-38]

Since one of the necessary conditions under s. 48(1) did not exist (the accused was not a **"driver"**), the stop was not statutorily authorized.

Justice Tulloch, however, noted the police did not have grounds to stop the vehicle nor did they attempt to stop it while it was being driven on a highway before it drove onto private property. For example, he said:

- ***"[T]his is not a case where the driver was swerving on the road. It is not a case where there was a broken taillight or any other obvious HTA infractions. It is a case of a driver who drove normally onto their own driveway and parked."*** [para. para. 8]

- ***"There was no suggestion here that the [accused] was attempting to evade the police. Indeed, it was accepted that he simply pulled into his driveway because he had reached his destination. A true case of flight might well contribute to reasonable grounds to detain the accused, depending on the circumstances."*** [para. 42]

Common Law Authority?

Justice Tulloch recognized ***"it is settled law that the police have a common law power to randomly stop vehicles in the course of protecting public roadways, absent reasonable suspicion."*** But here, the common law did not authorize the police to conduct a random sobriety check on a private driveway, in circumstances not authorized by the *HTA*, where the person exited the highway after the officer decided to conduct the stop but before the officer initiated the stop, and there were no grounds to suspect that an offence had been or was about to be committed.

Although the stop fell within the general scope of the common law police power to prevent crime (impaired driving) and protect life and property (the harms associated with impaired driving), Justice Tulloch found expanding the common law police power to pursue and detain an individual on their own private property without any suspicion of wrongdoing was not reasonably necessary. In his view, there were other options available to the police in pursuing the objective of deterring and detecting impaired drivers:

> There are many less intrusive, Charter compliant means of enforcement at the disposal of police in combatting impaired driving. For example, police have: (1) the common law power to conduct Reduced Impaired Driving Everywhere ("R.I.D.E.") programs; (2) the statutory power under the HTA to stop drivers without any grounds for the purpose of checking their sobriety, so long as the statutory preconditions are met; and (3) the common law power to stop a driver for an investigative detention based on reasonable suspicion.
>
> Considered in light of the powers the police already have at their disposal to combat impaired driving, and the greater intrusion on liberty posed by stops on private property, I cannot conclude that the power to conduct a groundless stop on private property is reasonably necessary. The police have extensive powers to combat impaired driving, and it is difficult to see the need for the courts to fill a legislative gap in this respect. The police can conduct a random stop under s. 48(1) as soon as the vehicle enters the highway. They also have the option to observe the driver without detaining them, and based on those observations, develop a reasonable suspicion that would give them a basis to detain.
>
> [...]

Considered in light of the powers the police already have at their disposal to combat impaired driving, and the greater intrusion on liberty posed by stops on private property, I cannot conclude that the power to conduct a groundless stop on private property is reasonably necessary. The police have extensive powers to combat impaired driving, and it is difficult to see the need for the courts to fill a legislative gap in this respect."

> The Crown argues ... that declining to authorize this police power will lead to an absurd consequence: drivers will be able to flee to private property to escape the enforcement of highway laws. In my view, this concern is misplaced. This is not a case of escape: there is no suggestion that the [accused's] actions were an artifice designed to evade police. In a true case of escape, the police may well have the authority to continue pursuing that person. It is important to bear in mind that the question is whether the police are entitled to stop someone on private property without any cause for suspicion.
>
> The police officers in this case did not immediately stop the [accused] after forming the intention to conduct a random stop to determine whether or not there was evidence to justify making a demand. They followed the [accused] for about a minute as he made a turn and then another turn into his driveway. The police lights were not activated until the [accused] was safely on his driveway.
>
> Certainly, drivers should not be entitled to escape onto private property to avoid culpability. However, police officers should not be allowed to follow drivers onto private property to investigate their driving where there are no grounds to suspect any wrongdoing.
>
> A police officer may choose to follow a driver along a highway to see if the manner of driving gives rise to a reasonable suspicion that the driver is intoxicated. Alternatively, the police officer may immediately stop the driver to see if there is evidence to support making a demand. However, where there is no indication from the manner of driving that the driver is intoxicated, police officers should not be entitled to follow a driver, after forming a crystallized intention to effect a stop, and wait to do so until after the driver has entered onto private property. This would allow the police to enter private property and detain people based on a claimed prior intention to stop the car, formed in the absence of any actual suspicion of impairment. The potential for abuse of such a power dictates against the recognition of the existence of such a power. [paras. 67-73]

Justice Tulloch also noted that ***"caution must be taken when it comes to low visibility encounters with police, which may leave some marginalized individuals at particular risk"***. A common law police power authorizing such stops would be difficult to review because the laying of charges would often not result from the random nature of these stops and those affected individuals would often have no forum to challenge the legality of their detention. Furthermore, judicial oversight of this power would prove challenging since its valid exercise would depend entirely on whether, in the officer's own mind, they intended to stop the vehicle before it pulled off the highway.

Since the police did not have the authority to randomly check the accused's sobriety on the private property, the stop was unlawful and therefore breached his s. 9 *Charter* right against arbitrary detention.

s. 24(2) Charter: Evidence Exclusion

The majority also would exclude the evidence under s. 24(2). Although the evidence was reliable and crucial to the Crown's case, the *Charter* breach was serious and significantly undermined the accused's protected liberty interests. ***"While there is no question that the exclusion of the evidence would undermine the truth-seeking function of the trial, society has a vital interest in having a justice***

"Officers are not above the law, and conduct that tests the limits of their authority should not be condoned by this court."

system that is above reproach," said Justice Tulloch in upholding the exclusion of evidence. ***"Officers are not above the law, and conduct that tests the limits of their authority should not be condoned by this court."*** The accused's appeal was dismissed and the accused's acquittal was upheld.

Another Approach

Justice Hourigan, in dissent, would have allowed the Crown's appeal and restored the verdict at trial. In his view, the police had the statutory authority under the *HTA* to make the stop on the shared driveway where they formed the intention to make the random stop on a public highway and the stop was carried out on private property as part of one continuous transaction. He found the majority's strict construction of the powers of a police officer to undertake a random traffic stop under the *HTA*, rather than a purposive approach, would prevent the police from effectively carrying out their duties. Motorists could avoid the power of the police to conduct random stops by simply pulling their vehicle onto private property:

> The sanctuary finding means that an impaired driver who the police intended to stop on a public highway is free to pull onto private property when the driver spots a police cruiser. This property need not be a place to which they have any connection or even a legal right to visit. It matters not that a police officer wished to conduct the random stop on a public highway. As long as the driver gets their vehicle onto a stretch of private property, sanctuary applies, and they are "home free." For drivers who are in the process of being pulled over as part of a random stop, if they can pull onto private property as the safe spot to stop their vehicle, arguably they too will have reached sanctuary. In many cases, this sanctuary will be fleeting, as the impaired driver will stay on the private property only for as long as the police cruiser is in the area. Once it is out of sight, the driver will be free to re-enter the public highway and continue to endanger public safety. [para. 96]

Justice Hourigan agreed with the Crown's submission that the police have the power under the *HTA* to check sobriety on private property provided the following criteria are met:

1. The police officer observed the driver operating on a highway;

2. The police officer formed the intention to stop the driver for a sobriety check while the driver was still on the highway; and

3. Although the driver left the highway and entered private property before the stop was conducted, the events constituted one continuous investigative transaction.

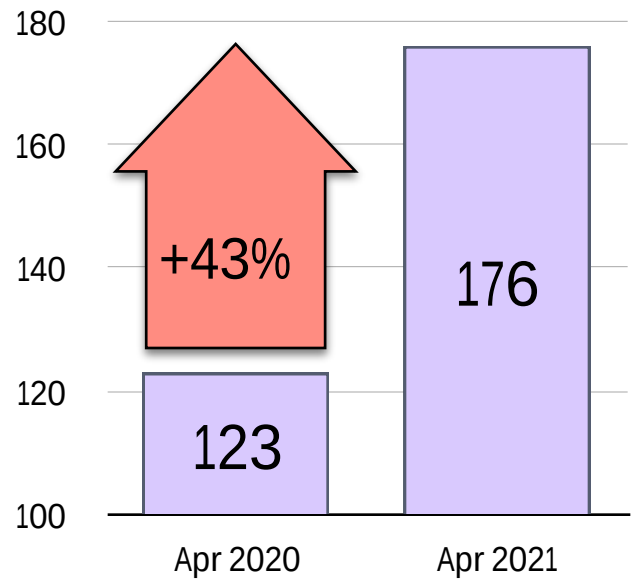
Moreover, if the police did not have the authority under s. 48(1) to make the already-intended stop on private property in this case, Justice Hourigan would have found they had the common law authority to do so.

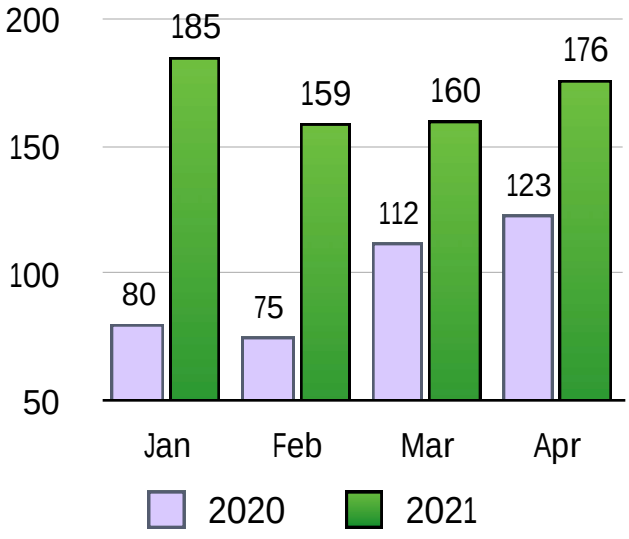
As for the s. 24(2) analysis, Justice Hourigan would have admitted the evidence even if there was a *Charter* breach. Any state misconduct was minor or technical and committed in good faith, the traffic stop was not intrusive and its impact on the accused's *Charter* protected interests was minimal, and the evidence was reliable and crucial to the Crown's case. ***"With the admission of the evidence, a reasonable person, informed of all relevant circumstances and the values underlying the Charter, would not lose faith in the criminal justice system or believe that the administration of justice had been brought into disrepute,"*** said Justice Hourigan. ***"On the contrary, the exclusion of reliable and crucial evidence based on a restrictive and technical view of police power would likely cause the public to lose faith and confidence in our criminal justice system."*** He would have allowed the Crown's appeal, set aside the appeal judge's order, and restored the convictions (and stay) entered at trial.

Complete case available at www.ontariocourts.on.ca

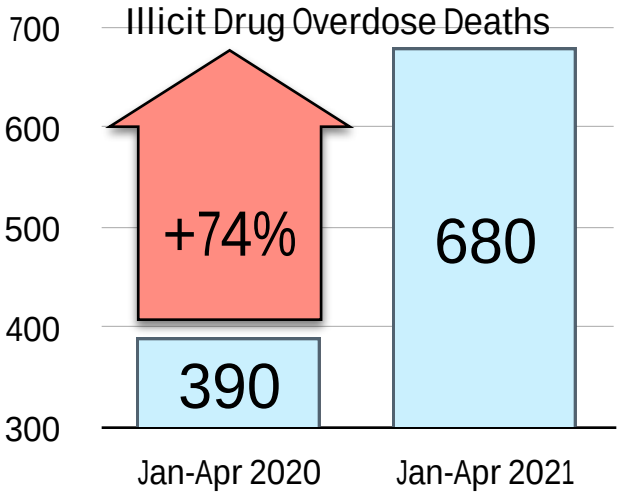
2021 BC ILLICIT DRUG TOXICITY DEATHS OUTPACE PREVIOUS YEAR

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, 2011 to April 30, 2021**. In April 2021 there were **176** suspected drug toxicity deaths. This represents a **+43%** increase over the number of deaths occurring in April 2020 (**123**).





In 2021, there were a total of **680** suspected drug overdose deaths from January to April. This represents an increase of **290** deaths over the 2020 numbers for the same time period (**390**).



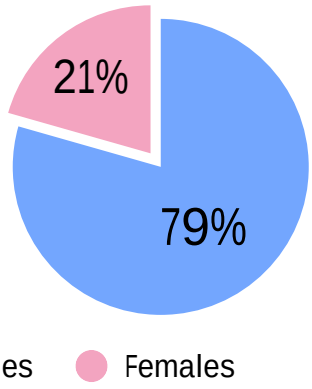
People aged 50-59 were the hardest hit so far in 2021 with **167** illicit drug toxicity deaths, followed by 30-39 year-olds (**160**) and 40-49 year-olds (**147**). There were **100** deaths among people aged 19-29, **89** deaths among 60-69 year-olds while those under 19 years had **8** deaths. Vancouver had the most deaths at **156** followed by Surrey (**85**), Victoria (**53**), Burnaby (**27**), Abbotsford (**26**), Chilliwack (**20**), and Kamloops with **19**.

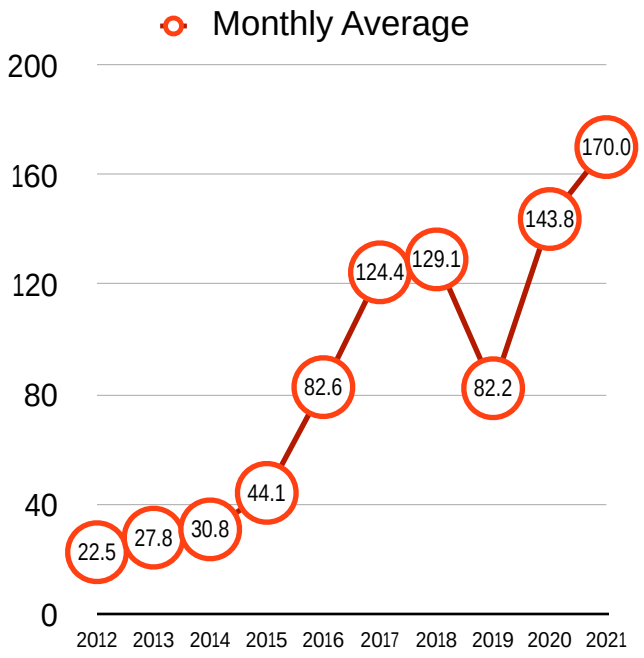
Overall, the 2021 statistics amount to almost **six** (**6**) **people dying every day of the year.**

Deaths by Sex

Males continue to die at about a **4:1** ratio compared to females. From January to April 2021, **540** males had died while there were **140** female deaths.

The January to April 2021 data indicated that most illicit drug toxicity deaths (**85%**) occurred inside while **14%** occurred outside. For **7** deaths, the location was unknown.



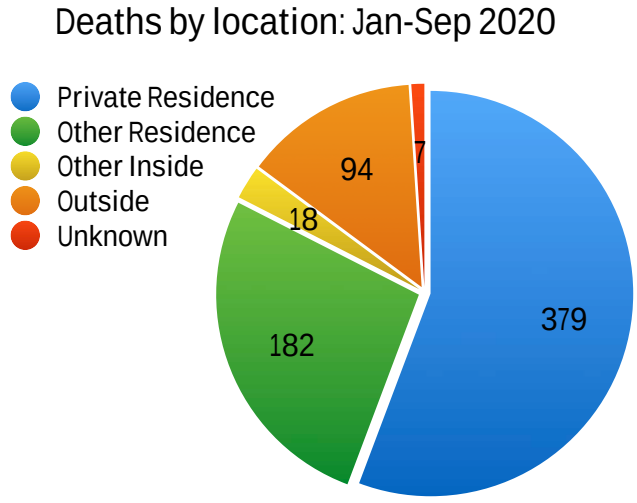


"**Private residence**" includes residences, driveways, garages, trailer homes.

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

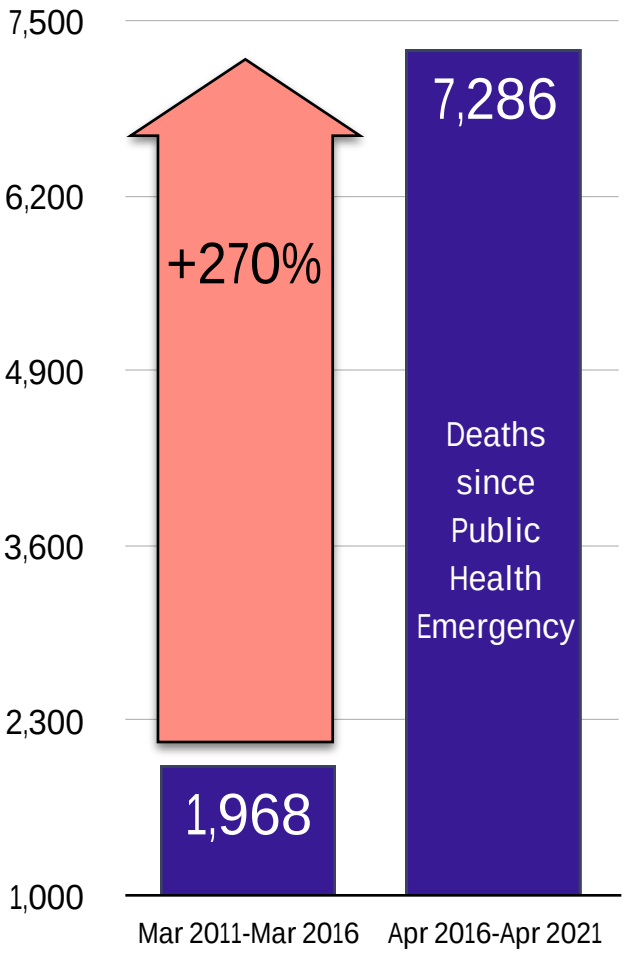
"**Other inside**" includes facilities, occupational sites, public buildings and businesses.

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



DEATHS SINCE PUBLIC HEALTH EMERGENCY

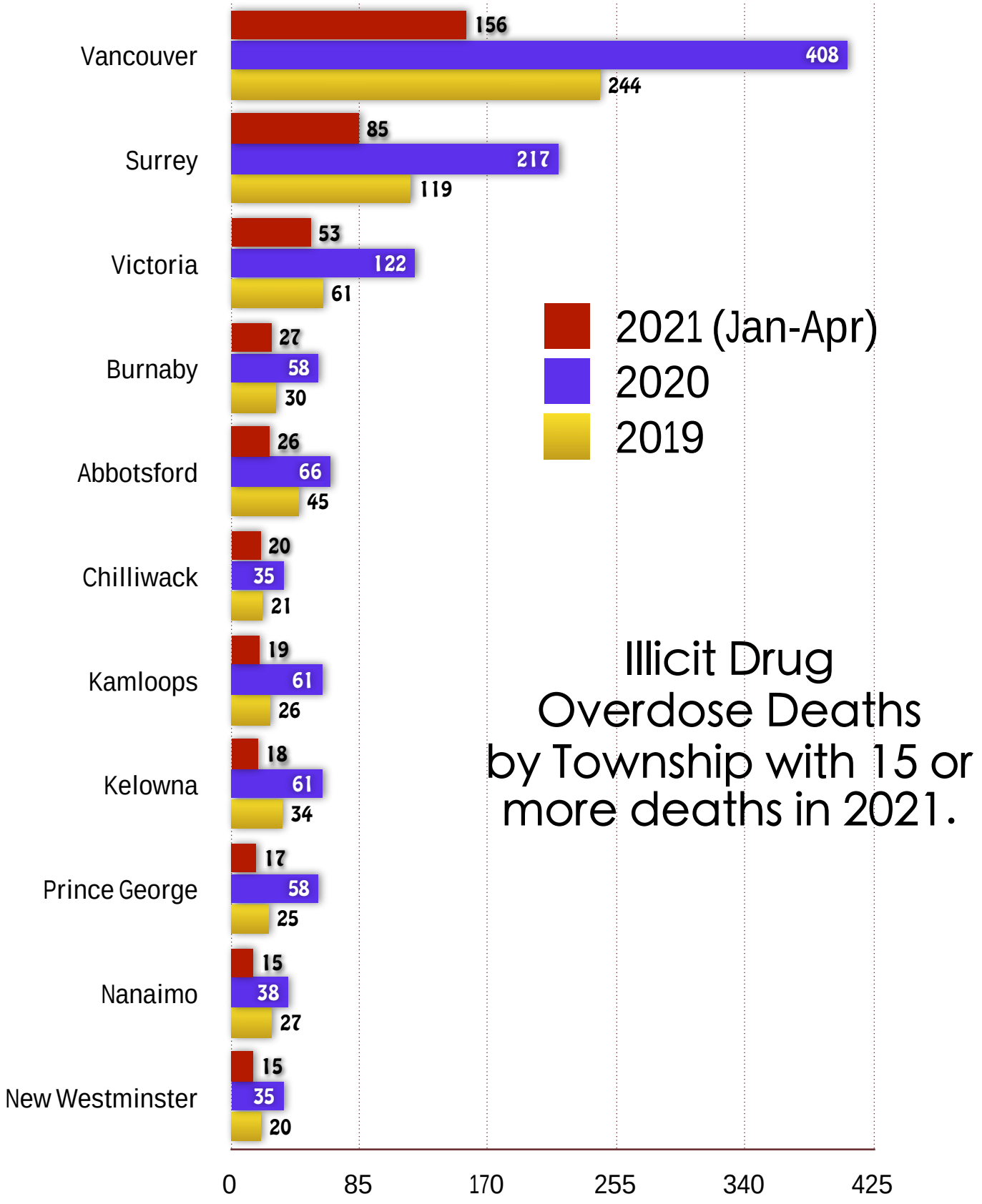
In April 2016, BC's provincial health officer declared a public health emergency in response to the rise in drug overdoses and deaths. The number of overdose deaths in the **61** months preceding the declaration (Mar 2011 - Mar 2016) totaled **1,968**. The number of deaths in the **61** months following the declaration (Apr 2016 - Apr 2021) totaled **7,286**. This is an increase of more than **270%**.



Source: Illicit Drug Toxicity Deaths in BC - January 1, 2011 to April 30, 2021. Ministry of Public Safety and Solicitor General, Coroners Service. June 1, 2021.

TYPES OF DRUGS

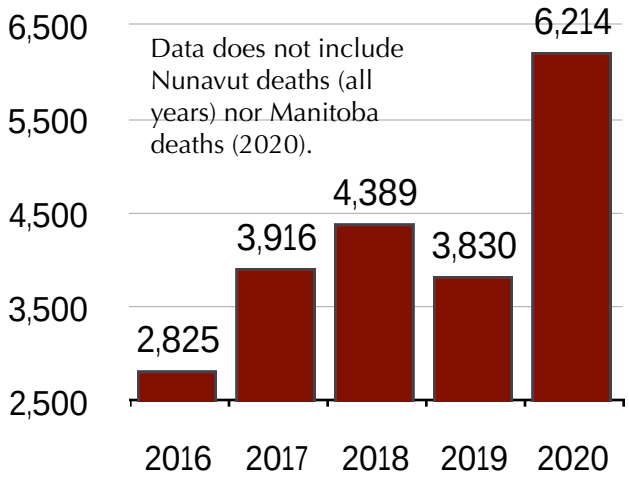
The top five detected drugs relevant to illicit drug overdose deaths from 2018 - 2020 were fentanyl and its analogues, which was detected in **87.1%** of deaths, cocaine (**48.7%**), methamphetamine/amphetamine (**38.6%**), ethyl alcohol (**28.7%**) and benzodiazepines (**6.6%**). Other opioids (**30.8%**) and other stimulants (**2.8%**) were also detected.


Vancouver
156
408
244
Surrey
85
217
119
Victoria
53
122
61
Burnaby
27
58
30
Abbotsford
26
66
45
Chilliwack
20
35
21
Kamloops
19
61
26
Kelowna
18
61
34
Prince George
17
58
25
Nanaimo
15
38
27
New Westminster
15
35
20
2021 (Jan-Apr)
2020
2019
Illicit Drug Overdose Deaths by Township with 15 or more deaths in 2021.
0
85
170
255
340
425

CANADA's 2020 OPIOID DEATH STATISTICS

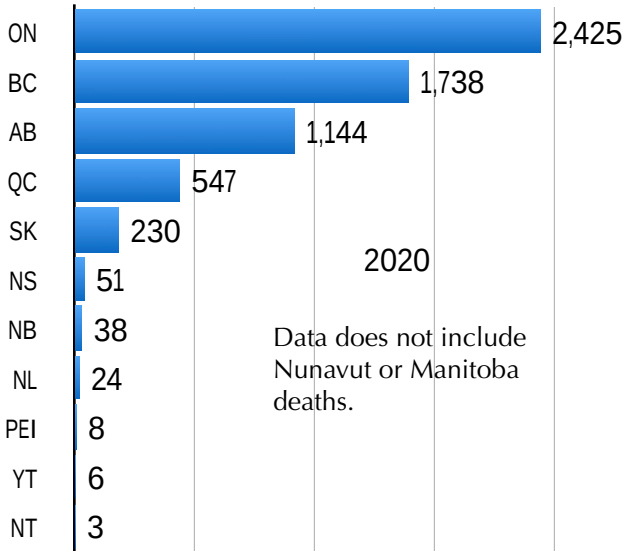
The Public Health Agency of Canada released its data concerning ***"Apparent Opioid and Stimulant Toxicity Deaths: January 2016 to December 2020."*** In 2020, there was on average **17 deaths per day** related to apparent opioid toxicity.

Apparent Opioid Toxicity Deaths- Canada



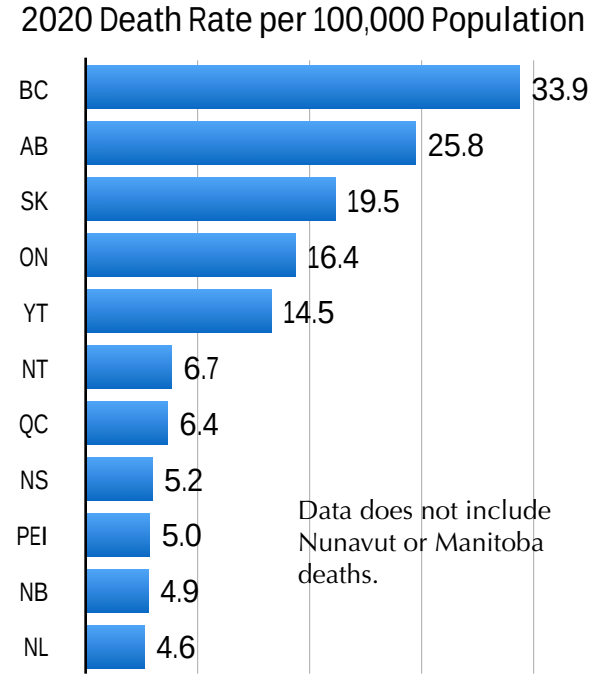
Deaths by Province/Territory

Ontario had the most apparent opioid toxicity deaths in 2020 at **2,425** followed by BC (**1,738**), Alberta (**1,144**), Quebec (**547**) and Saskatchewan (**230**).



Death Rate by Province/Territory

BC had the highest death rate of apparent toxicity deaths at **33.9** deaths per 100,000 population in 2020 followed by Alberta (**25.8**), Saskatchewan (**19.5**), Ontario (**16.4**) and the Yukon (**14.5**).



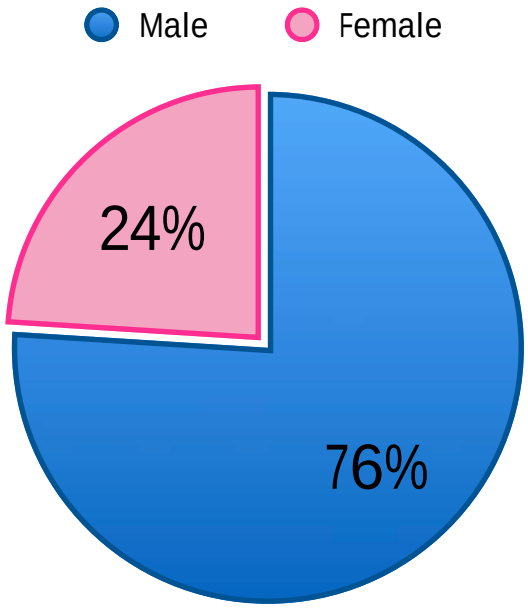
Manner of Death

The Public Health Agency of Canada reported that most opioid toxicity deaths in 2020 were accidental (**96%**), **2%** were suicide and **2%** were undetermined.

Manner of Death - Apparent Opioid Toxicity Deaths				
Year	Accidental	Suicide	Undetermined	Total
2016	2,466	264	95	2,825
2017	3,549	276	91	3,916
2018	4,087	218	84	4,389
2019	3,617	145	68	3,830
2020	5,994	105	115	6,214

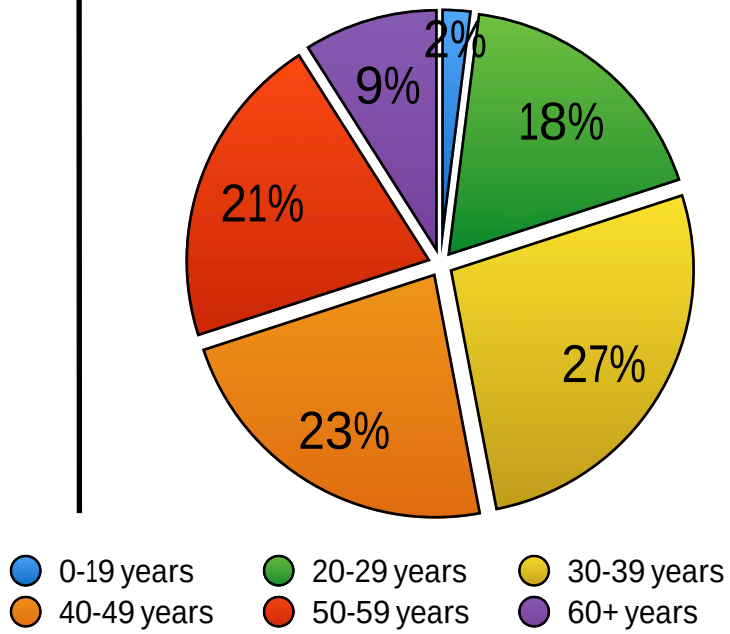
Deaths by Sex

Most deaths in 2020 involved males.



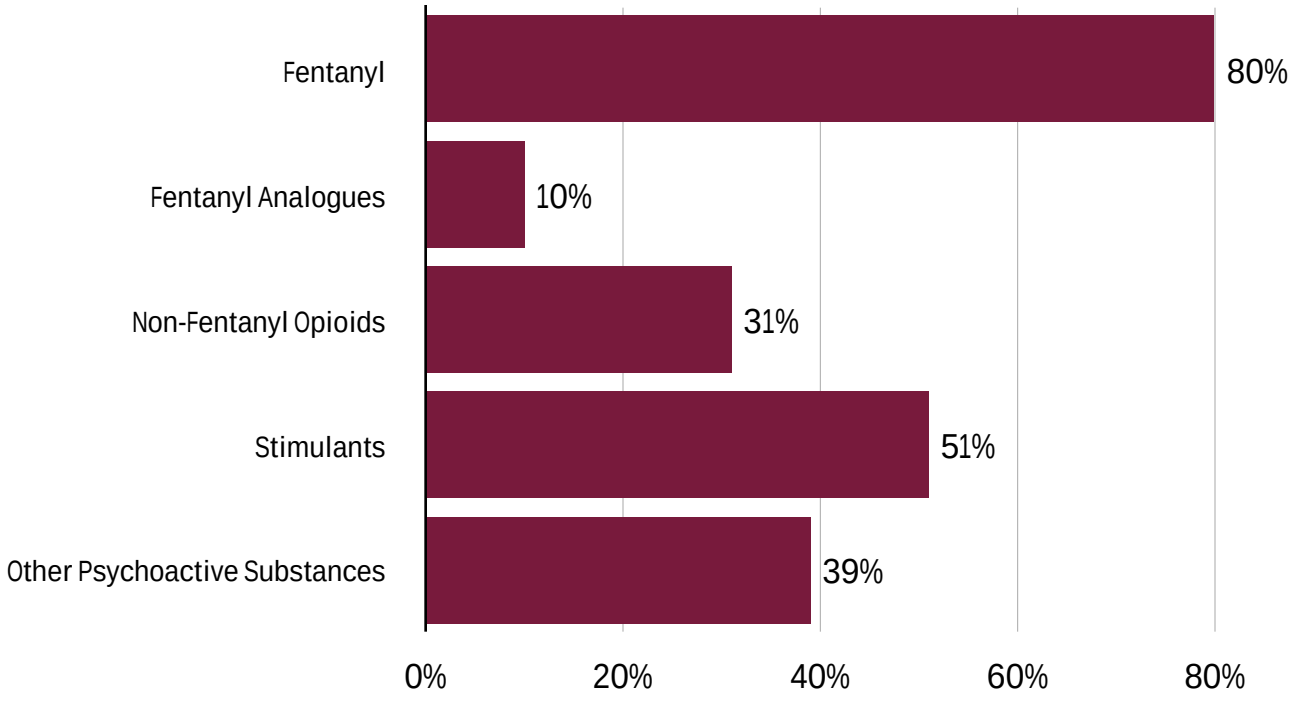
Deaths by Age

The age group hit hardest by apparent opioid toxicity deaths were those aged 30 to 39 years-old.



Drugs Involved in Deaths

The majority of apparent toxicity deaths in 2020 involved fentanyl (**80%**). Other drugs involved in the deaths included fentanyl analogues, non-fentanyl opioids, stimulants and other psychoactive substances.



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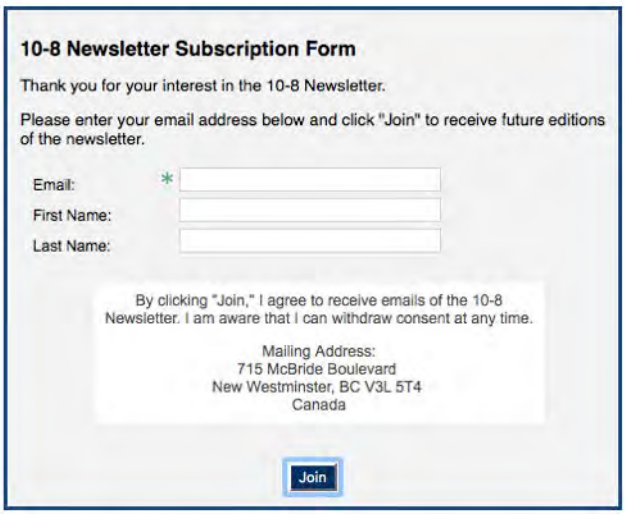

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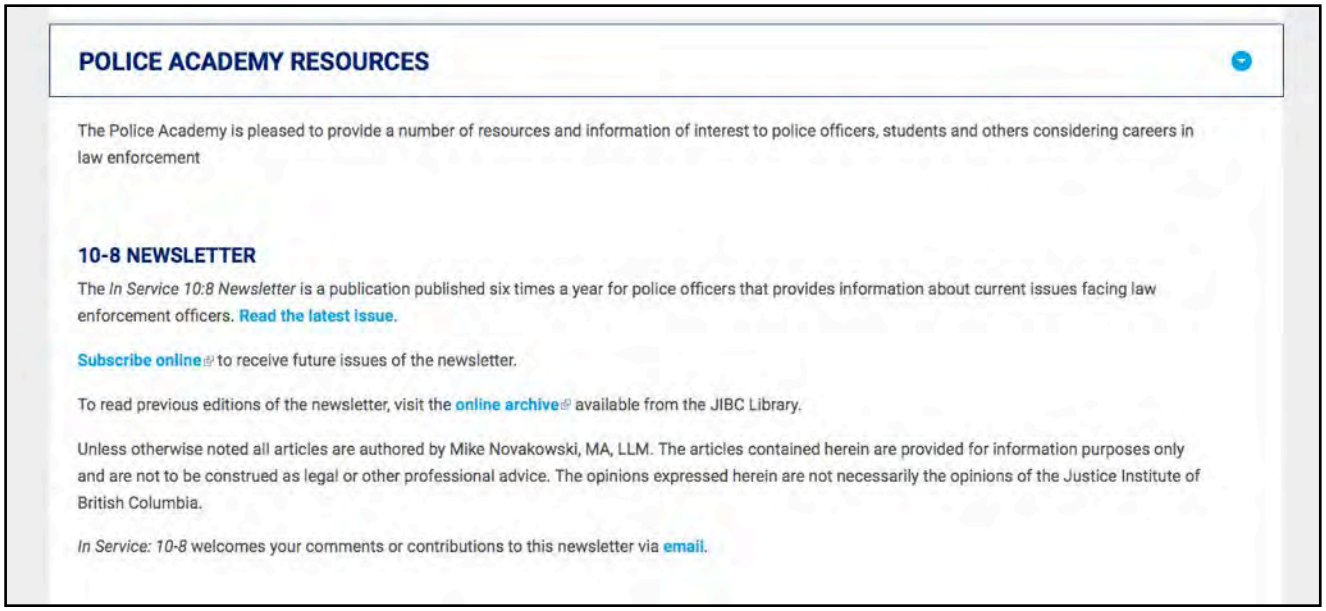

POLICE ACADEMY RESOURCES

The Police Academy is pleased to provide a number of resources and information of interest to police officers, students and others considering careers in law enforcement

10-8 NEWSLETTER

The *In Service 10:8 Newsletter* is a publication published six times a year for police officers that provides information about current issues facing law enforcement officers. **Read the latest issue.**

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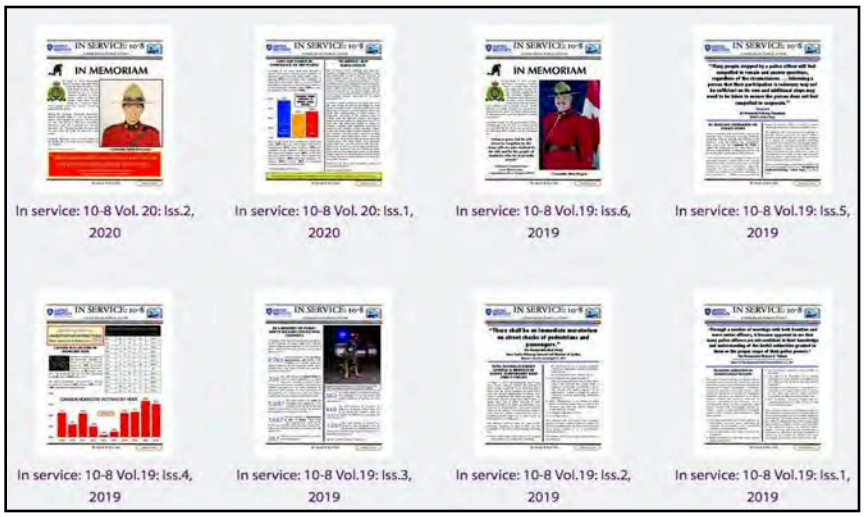

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