

# *Blue Line Magazine*

January 1989



An independent magazine produced by and for the law enforcement community

# DOESN'T YOUR JOB COME WITH ENOUGH RISKS?



**Y**ou're sworn to serve and protect. And sometimes, keeping that oath means you have to take risks. Especially in situations involving confrontation or emergencies.

**B**ut that doesn't mean you have to accept *all* the risks that come with these situations. And neither do your family, friends, or fellow officers.

**T**he risk to police officers of hepatitis B infection is growing every day. It's a serious and potentially fatal viral disease that affects the liver, and one whose consequences can last a lifetime.

**H**epatitis B is spread through contact with contaminated body fluids, like blood, sweat, saliva, or even tears. Fluids that are common to almost every kind of accident, emergency, or confrontational situation.

**O**ne problem with hepatitis B is that you can't tell on sight who has it, or who is a carrier and might infect you. Another is that the disease can't be cured. And, until hepatitis B runs its course, which might take the rest of your life, *you could be a risk to everyone around you!*

**E**ven though hepatitis B can't be cured, *there is protection*. It comes in the form of a simple series of three or four vaccinations. Later, a booster injection every 5 years or so will protect you and those around you for the rest of your life.

**R**emember, though you work to serve and protect, you need to extend that protection beyond the public to your family, your loved ones, and your fellow officers. It only takes a few minutes to call your doctor, and to arrange for protection against hepatitis B, so why not do it *right now*? After all, doesn't the job come with enough risks already?

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A PUBLIC SERVICE MESSAGE  
TO THE POLICE OFFICERS OF CANADA  
FROM  
**SMITH KLINE & FRENCH CANADA LTD.**

# Blue Line Magazine

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Blue Line Magazine

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## Editorial

# Blue Line Magazine. What is this thing all about?

**Y**ou know it's the truth. Keeping up to date is one of the most important and the most difficult jobs that any person in law enforcement has to deal with. This is the concept (and now the reality) of Blue Line Magazine.

We will be taking on the task of keeping you on the leading edge of law enforcement. Our excellent resources will ensure the information you get will keep you on that leading edge. Our writers will bring you stories, case law, and articles of entertainment and interest. All designed in a manner that will encourage you in your chosen profession.

Blue Line Magazine is a publication that has no political preferences. It has no leaning toward management or staff. It is a trade publication aimed at the law enforcement community.

The smaller police forces and security agencies in particular will find this publication of value to them. We will endeavor to supply information that will reduce manpower down time for training and upgrading.

It is difficult for a large city police force to realize the problems in training an officer in a smaller community. If one officer goes to Aylmer for a course from a four man detachment they are down

25% of their strength. That is a real problem. The remaining officers have to work 25% harder and have a 25% reduction in support. The community is denied a quarter of its protection. However everyone benefits from the upgraded talents of that officer. The objective of this magazine is to reduce this down time.

This magazine is a private venture that, it is hoped, will be supported by the subscriptions of its readership. The editor/publisher is a police officer with considerable background in police publications. He previously created and published "The Police Informant", a monthly information/trade publication financed by the Metropolitan Toronto Police Force.

The costs incurred in this production can be fully covered by a relatively small subscription base. It will be published monthly because that is how much information there is out there. A limited number of magazines will be sent each month to all police forces in Ontario. There will not be sufficient numbers for every officer. The alternative will be to share the issues sent or to subscribe either in bulk or individually. Bulk rates apply with five copies or more.

The advertisers in this publication are companies and individuals in the private sector who support the concepts of Blue Line Magazine. They are to be thanked for their support and willingness to take a chance on us.

We encourage you to read on. If you feel you are a little wiser at the other end of this issue then we have succeeded. An up to date informed law enforcement community is our objective.



**Morley Lymburner, an 18-year veteran of the Metropolitan Toronto Police Force, previously published and edited "The Police Informant", a Department-financed publication for training and upgrading police skills.**

Without reading this article any further stop where you are. I really want you to think about this. Can you remember your oath of office? Try to remember even the basic points involved. Difficult isn't it?

"I do swear that I will well and truly serve Her Majesty the Queen in the office of Police Constable....., during the pleasure of the Board of Commissioners of Police without favour or affection, malice or ill will, and that to the best of my power, I will cause the peace to be kept and preserved, and prevent all offences against the persons and properties of Her Majesty's subjects; and that while I continue to hold the said office, I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully, according to law. - SO HELP ME GOD."

Quite a statement isn't it? This is what every new police officer recites off with his one hand in the air and the other hand holding a Bible. Hardly any officer ever sees this oath again after his first day on the job. During his training session he receives a handout, but no real in-depth look at the words are ever required of the officer.

It is all too easy for officers today to take up the cry of the masses for individual rights rather than to consider their duty towards the general good of society. Is this attitude good for the officer in discharging his duty? Lets step through this oath and see what it says.

### The basics

Its basic position is that the police officer is placed in a position of uncommon power and trust. This position is given to the officer by virtue of the Queen through her representatives and with a geographic positioning for the purpose of administration and control.

It is written in the first person so that each officer is aware that THEY are taking this position and that it is not being forced upon them. It is taken with the clear knowledge that they are going to be made accountable to keep their word.

### Duty without favour

The majority of the oath is taken up by describing the manner in which the officer intends to perform his duties. The public can expect certain attitudes

# "To the best of my power"

## The meaning of your oath

- Morley Lymburner -

and certain responses from each and every officer. It is this consistency of service that is vital to the fabric of the force and the community.

Every citizen is assured that each officer will perform his duty "without favour or affection, malice or ill will." In other words the officer will not let his personal opinions interfere with the job he has to do.

The officer then states that he/she will "cause the peace to be kept and preserved." The good order we now possess will be kept at the same level.

### Prevention vs. apprehension

"Prevent all offences against the persons and properties" of the public at large. This does not mean that each officer is expected to pounce on absolutely everything he sees wrong. At the beginning of this area it states "to the best of MY power." It does not suggest the officer is superman. Just a person expected to care about what is happening around him.

It is this area that uses the word "prevention." This is an all encompassing word that leads the police in areas that some officers feel we do not belong. It is clear that prevention is specifically included while the word apprehension is not. The duty of arresting criminals comes by legislation not by oaths of office. The Oath of Office is a statement of intent. We all state we will do certain things.

In the last line it says "according to law." Laws such as the Criminal Code, The Highway Traffic Act and the Police Act.

This area states further that the duties put in place by statute will be enforced. This area could be described as a limitation rather than an expansion of authority. That everyone, officer and citizen, knows they can be subject to laws and rules being invoked by a popular and representative government, not by an arbitrary decision of the individual officer to make his own laws.

"...While I continue to hold the said office..."

It becomes quite clear at this point that this is no mere job that can be performed by punching a clock. There is no room for personal likes or dislikes but there is room for compassion and discretion.

Now let us consider the officer assigned to a picket line, a demonstration or a domestic dispute. Does this officer have a right to express his opinion? Does this officer have the right to lose his temper and strike out at someone as a result? Does this officer have the right to ignore laws? Does this officer have the right to make judgments of individual rights and wrongs? Does he have the right to refuse to protect some person or segment of society?

He has the right to his individual opinions and discriminations. Unfortunately while he is an officer he must not permit them to influence his job or anyone else's.

### Why is this ?

Why is this the way it is? Simply put it is because everyone will know the officer as a known quantity. He has given his word to do something in a predictable way. The public counts on it, the Chief counts on it, and your fellow officers count on it.

In the middle of a fight an officer does not wish to hear his partner advise him that it is against his personal belief to fight for such a cause. There is no excuse at this point that he is a conscientious objector. A C.O. understands the rules at the beginning of the game and determines then that he does not wish to participate. He does not wait for the time of need to arrive and then make his feelings known.

### "So help Me God"

And what about those four words at the end? It advises the officer that he is not serving two masters. That his accountability is a personal one that is not restricted to earthly limitations.

# **SLOW THEM DOWN!**

***Only YOU Can!***

**T**he Insurance Bureau of Canada and the police forces surrounding Metropolitan Toronto are now making public what has been known for many years. The biggest killers on the highway are the good guys. Not the drunk drivers, not the drug freaks and the depraved in society but the good guys. People like you and me.... speeding.

The Insurance Bureau recently obtained approval to have quicker access to all driving records. This was precipitated by a Supreme Court ruling that they could no longer surcharge by age or sex as this violated the Charter of Rights and Freedoms. It became evident to the court that a much fairer method would be to judge each insurance applicant on their own merits. To this end the Insurance Bureau has begun to supply its member agencies with up to date driver record searches via computers. One of the criteria for determining rates in future will be traffic violations and demerit points.

## **The police challenge**

The challenge now will be in the police profession. Each officer will have both sides tugging at them. One side will be pleading for a break from the ticket or demerit points. The other side will be pointing out the importance of more stricter enforcement.

Each officer has a level of discretion that is his alone to determine to a degree. Sometimes this discretion is self ingrained while others are conditioned by his working environment and peer group. In some cases this discretion is influenced by no greater pressure than some myth that is lost in a clouded history somewhere.







For many years a lot of officers routinely reduced speeding tickets to 15 km over the limit unless there were some extenuating circumstances. This has become so ingrained that many citizens have the firm belief that there is no offence for speeding unless you exceed 15 km per hour over the maximum.

This automatic dropping of ticket speeds has caused another serious problem. This problem arose when an officer investigating a traffic fatality performed an in depth check on the deceased's driving record. The M.T.O. supplied the officer with a complete transcript of the victim's violations from the day he first obtained a licence. The officer was surprised to find that the young man had 19 speeding convictions in 6 years. In spite of this he had never accumulated a demerit point. All offences were for 15 km/h over the speed limit. The accident reconstruction indicated he was 24 km/h over the limit at the time the accident claimed his life. This translates into 19 police officers who helped this young man kill himself.

### Good guys killing good guys

He was a "15 per center". This is what traffic analysts refer to as the hard core speeder. They are frequently stopped for speeding, they are always more than 20 over the limit, and they are all good

salesmen. They always manage to talk their way out of the demerit point range and this ability encourages them to continue. Many times with grievous results. Officers should be aware of

**He was a "15 per center". This is what traffic analysts refer to as the hard core speeder. They are frequently stopped for speeding, they are always more than 20 over the limit, and they are all good salesmen.**

the challenge of enforcing the traffic laws. The challenge of preventing good guys from killing good guys is a job that only they can perform. Police officers are continually challenged to perform many duties. These duties are, at times, quite opposite in nature. Problems arise when an officer is continually thrust into dealing with hard criminals and then place him in a capacity of protecting good citizens from their own misadventure. The generalist police officer suddenly loses sight of the importance of traffic enforcement under these circumstances.

The Ontario Provincial Police commenced their "Strict is Fair" campaign over a year ago. They advised people throughout the province that their offi-

cers were going to enforce more strictly and thereby hope to reduce the accident picture. This campaign was backed up by action and it had favourable results. This type of campaign must be expanded and duplicated in the large municipalities of the province.

Officers charged with the duty of traffic enforcement should be given a higher priority. They must be trained and equipped at a higher level than in the past. They must be made aware of the importance of their task and strategically placed for maximum impact.

The key to success in traffic enforcement is the ability to act in a professional manner. Each officer of the Metropolitan Toronto Police Traffic Radar Units routinely issue from 15 to 25 summonses in a shift. Each officer is aware that the citizens he is stopping are, by in large, good people. People who work hard, feed their families and pay their taxes. Approaching these people with a ticket in your hand is not an easy task. It is most certainly a thankless job. However the concept of good people killing good people is intolerable enough to make ticket writing a more attractive alternative.

It is difficult to emphasize the importance of a safe traffic structure that encourages the movement of large masses of people. The 15 per cent who wish to disregard the safety of others must be slowed down... and Only YOU can do it!

## New video provides in-service training at home

Self-defence tactics against knives and other slashing and stabbing weapons are featured in an action-filled new videocassette produced for home training by Calibre Press in the U.S.

Called "Surviving Edged Weapons," the 72-minute program documents the growing threat to law enforcement from "knife culture" offenders and shows how officers can successfully defeat edged weapon attacks with firearms, batons and empty-handed control techniques.

Realistic depictions of how knife assaults actually occur and dramatic



interviews with officers who've survived near-fatal attacks underscore the video's valuable teaching points.

"Many more suspects these days are armed with knives than with guns," says Dennis Anderson, the film's pro-

ducer and director. "Yet officers often fail to realize how fast and dangerous knives can be, until they get cut or stabbed. 'Surviving Edged Weapons' is designed and priced to allow individual officers to get up-to-the-minute in-service training on this subject at their own convenience at home, through their personal videocassette players."

"Surviving Edged Weapons" is distilled from more than 22,000 feet of film shot for the production. The cast includes 196 law officers, the most ever used in a police training film. An unprecedented number of special effects are also included and were handled by Sam Barkan, head of special effects for the recent motion picture, "The Untouchables."

The program, intended for law enforcement only, is available for \$56.00 (Canadian) from Green Gables Book Shop (416) 294-4773.



**O**n September 22nd, 1988, the Ascot-Lennoxville Police Force was the first Quebec police force to vaccinate its officers en masse against hepatitis B, a serious and easily transmitted liver disease that police officers and other emergency personnel are at high risk of contracting on the job.

Police Director Richard Tremblay notes, "It is important to protect our officers and their families. Just as every police car is equipped with a bullet proof vest in case it's needed, this new hepatitis B vaccine is needed to protect our officers in case they come in contact with a carrier. Our police association

also believes this to be important and we are eager to have our officers receive the new vaccine."

To protect themselves, Ascot-Lennoxville Metro Police officers are being

given "Energi B," a new synthetic vaccine introduced by Smith Kline and French Canada Ltd., that virtually eliminates the risk of contracting hepatitis B. The vaccine is currently being used by many hospitals to protect medical and other emergency staff against the disease.

### Easily transmitted

Hepatitis B is transmitted through blood, semen, saliva and other body fluids. The risk to police and other emergency personnel has risen due to increased contact with growing numbers of carriers of the disease such as homosexuals, intravenous drug abusers, prostitutes, institutionalized patients, prisoners and immigrants from countries with high prevalence of the disease such as China, Southeast Asia, Caribbean, Africa and Southeast Europe.

Hepatitis B is more easily transmitted than AIDS. According to some studies, the chances of contracting the AIDS virus from a single needle-stick are .05 per cent, compared to 24 per cent when the hepatitis B virus is involved.

Police Director Tremblay's concern is reflected by an incident in 1977, when a paramedic in Norwood, Ohio contracted hepatitis B when he jabbed his finger with an intravenous needle while drawing blood samples from a semi-comatose patient. The accident happened when the patient jerked his arm and the needle was displaced and penetrated the paramedic's finger. He died seven years later in 1984 from the disease.

Some forces have a policy of repayment to officers for obtaining the inoculation. Contact your Chief or your Association representative for information on your force's policy.



*Police Constable Guytane Perron, Ascot-Lennoxville Metro Police, isn't afraid to look at the needle. One of 17 officers in her force to be vaccinated against hepatitis B, Perron receives a shot from nurse Rodrigues Drapeau. As a result Officer Perron will be protected from contracting the sometimes fatal disease for life.*

# The light side

Stranger moments  
from the street and the court

## Stripped of toys

Communist party officials in the Soviet Union are being stripped of some of their most prized status symbols. Moscow Traffic cops have begun confiscating sirens and flashing lights from almost 800 cars which are used by local Communist Party officials.

Moscow motorists have become accustomed to the sight of a local party official whizzing through midtown streets, sirens wailing and lights blazing. But the Traffic authorities say enough is enough.

Police said the devices were confiscated because they had "too frequently been used just to gratify one's ego."

## No scratch to pay for scratches

Last December a 22 year old milk store clerk from Cornwall decided to pass the boring night shift away by scratching off the "Scratch and Win" Lottery tickets in the store.

Her grand scheme was to scratch as many as she could and use the winnings to pay off the scratching habit and maybe even turn a tidy profit.

After scratching the first 25 tickets she discovered she had not won enough to pay for the tickets. She then continued to scratch in a desperate hope that lady luck would go her way.

After a scratching frenzy with 127 instant-win tickets she still did not have enough to pay for the tickets. In the end there was \$254.00 worth of \$2.00 tickets in the garbage can.

A judge who understood the plight of the situation gave the woman a six month suspended sentence.

## Windy prosecutor blows away defence

An irate defence attorney from Sonora, California, is presently attempting an appeal due to the District Attorney's flatulence. His client was convicted recently of six counts of break and entry.

The defence attorney was basing his appeal on the fact that during his summation to the jury the District Attorney "broke wind" at least 100 times. The disgusted attorney added that "he even lifted his leg several times."

When the Prosecutor passed gas during the defence's closing argument,

the defence went on the record to protest because "the closing argument is supposed to be sort of sacred."

The prosecutor apologized once, claiming it was an accident. "But I don't think it was. He just kept doing it, as if to show his disrespect for me, my case and my client."

When questioned about the incident the District Attorney's office simply stated, "it's absurd, and we are not going to dignify it with a response."

## Sues parents for conceiving him

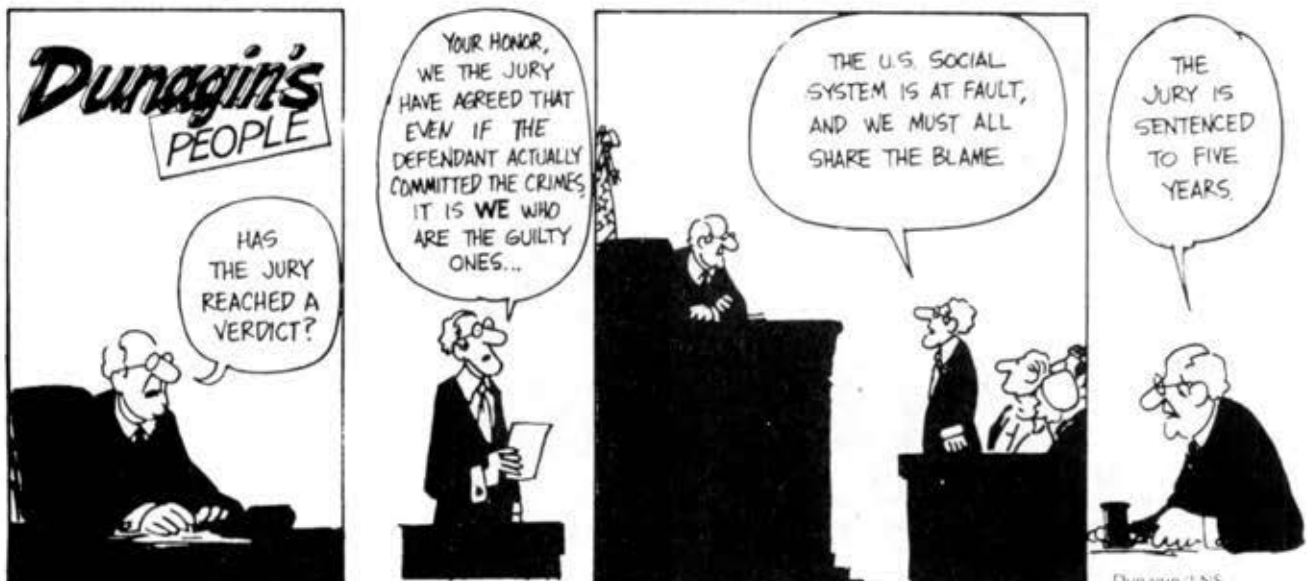
A 17 year old Finnish youth is suing his parents for a million dollars because they brought him into the world without his permission.

In this case the teenager, Allan Grahn, alleges that his millionaire parents, of Tampere, Finland, brought him into the world without his consent following a "willful and wanton act of conception."

The youth's lawyer stated, "Life is painful and fraught with hardship. Mr. Grahn genuinely thinks his parents were not within their rights to expose him to such suffering without his permission."

The lawyer representing the parents advised that, "This is a lawsuit-crazy world and there's no telling how a court is going to react. It's no secret that my clients are quite well off and could pay what their son is demanding. If we're not careful, we really could lose out."

If he wins this one there will be a lot of business for lawyers representing unhappy children.



The Law Reform Commission was established to review the current Criminal Code and make suggestions for restructuring with a view toward uniform order and in light of the Charter of Rights and Freedoms.

The Commission is more convinced than ever that Canada needs a new Criminal Code. Over the last 96 years, the Criminal Code has been sporadically amended. Parliament has tried valiantly to keep the Code up to date through these amendments, but it has yet to undertake the major overhaul which is required.

The following is a brief layout suggested by the Law Reform Commission for a new Criminal Code.

### CRIMES AGAINST THE PERSON

This section deals with such things as Assault, Murder, endangerment of life, Sexual Assaults etc.

### CRIMES AGAINST PROPERTY

This chapter will include thefts, fraud, and break and entry.

### CRIMES AGAINST THE NATURAL ORDER

Although our environment is protected by federal statutes, the Commission has included in its draft code, a crime of "disastrous damage to the environment" in order to impose criminal sanctions to damage involving long term loss of natural resources.

### CRIMES AGAINST ANIMALS

Under the new Code, animals are protected in their own right and not simply as chattels. The offence of cruelty to animals, now under the property offences of the present Code has been placed under "Crimes against Natural Order." These provisions emphasize the humane treatment of animals.

### CRIMES AGAINST THE SOCIAL ORDER

#### Crimes against social harmony

The Commission has redefined the present "hate Propaganda" crimes to conform more closely with the Charter of Rights. This would come under Crimes

# New Criminal Code closer to reality

## Highlights of Report 31 from the Law Reform Commission of Canada

Against Social Order section of a new Code.

The new section would be called "Stirring up Hatred" and would be laid under the more serious situations where hatred is aimed at a particular race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

#### Crimes against public order

This section includes violation presently found under part II of the Code and it lists eight offences against public order. The first "Disturbing public Order" is the basic crime against public order. It has no corresponding section in the present Code and incorporates elements of breach of the peace and the concept of unlawful assembly.

The next four offences: Disturbing public order by hatred, unlawful assembly, riot and failure to disperse, are aggravated forms of this crime listed in ascending order of gravity.

The remaining three: raising false alarm, public nuisance and loitering, are a miscellaneous group of offences commonly comprised under the Public Order heading.

### CRIMES AGAINST THE GOVERNMENTAL ORDER

This title includes four chapters: "Corrupting Public Administration", "Misleading Public Administration", "Obstructing Public Administration", and "Crimes against state security."

#### Obstructing public administration

Provisions pertaining to obstruction of justice are scattered throughout the current Code, while the matter of "bringing justice into contempt" is currently left to the common law. The new Code gathers the variety of offences character-

ized by "obstruction" into a single chapter, thus allowing them to be understood in a more orderly, comprehensive fashion.

#### Media access and publication

The new Code does away with automatic publishing bans and replaces them instead with clear, coherent and specific provisions designed both to protect the participants in legal proceedings and the freedoms of those whose jobs it is to report on these matters.

For example, it prohibits the publication of identities of victims of sexual crimes and witnesses under the age of 18 years. There is a prohibition of publication of certain information while a civil or criminal trial is pending. Among the information not to be published are admissions, criminal record of accused person, and psychological data about a party or an accused person.

#### Crimes against state security

The new Code incorporates offences in the Criminal Code and offences contained in the Official Secrets Act in one chapter. It simplifies the arrangement and streamlines the substance by omitting unnecessary offences.

The Commission recommends the restriction of the crimes of espionage and unlawful disclosure to classified information. On the other hand they remove the need for prejudicial purpose and simply criminalize gathering or disclosing which will injure the national interest.

The Commission would be grateful if all comments could be sent in writing to: Secretary, Law Reform Commission of Canada, 130 Albert Street, Ottawa, Ontario, K1A 0L6. Blue Line Magazine would like to have a copy of any submissions by our readers.





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The redesigned accident reports produced by the Ministry of Transportation Ontario are now one year old. This new report had a lot of study and input from the police profession. Many officers have expressed their satisfaction with the new concept.

The M.T.O. reports that the majority of the accident reports are being handed in with few errors. However they would like to point out a few of the minor problems that do exist.

**1. Ministry Microfilm Number** - the unlined space at the top of the Investigating officer's Description of Accident and diagram is to be left blank.

**2. Involved Persons** - If personal injury or death results to any involved person, information on ALL persons involved in an accident including passen-

# Ontario Accident Reports one year old

gers must be completed. (The exception for uninjured bus passengers is found in Section 0334, page 2 of the User Manual).

**3. Vehicle Condition** - the vehicle condition is required for each involved vehicle. Boxes 31 and 32 are being inadvertently crossed out, when officers cross out box 29 and 30.

**4. Initial Impact Type/Vehicle Maneuver** - the initial impact type best describes the general path of the vehicle immediately before the first impact while the maneuver is that which the vehicle was performing prior to impact.

**5. Miscellaneous** - officers are incorrectly numbering the pages of the accident reports.

Ver 1  
Use Template Ver 1 with this report

**Motor Vehicle Accident Report**

Report Type:  Original  Amended  Failed To Remain

Accident Number: 880320 Sat 14:45 Page 1 = 1

Time Officer Arrived or Police Force Reported to: 15:05

Name of Investigating Officer: GRIME, John

Name of Submitting Police Force: Your Town Police Force

Location: R1 South Street East on Elgin Mall R2 Near # 364

Driver 1: RAYNHAM, Elaine G. Address: 19 Trisalgar St. Phone: 631-5148. License: R0970-20044-26206. Vehicle: Dodge 86 charger Red 30.

Driver 2: HASSALL, William G. Address: 1028 Valetta St. Phone: 661-2379. License: H0764-78644-10821. Vehicle: Toyota 87 Camry Silver 40.

Vehicle 1 Insurance: State Farm Mutual Automobile Ins. Co. 1268-406-030-600. CVOR: G. License Class: G. Approx Speed: 15 Km/hr.

Vehicle 2 Insurance: Co-Operators Ins. Association. CVOR: G. License Class: G. Approx Speed: 20 Km/hr.

Initial Impact Type: 13

Miscellaneous: 13

## CASE LAW: EVIDENCE

### Footprint evidence admissible (Regina Vs. Sparks)

A Vancouver County Court has ruled that a man taken into custody for the purpose of taking a plaster mold of his feet was unlawfully detained. However the court decided that the footprint evidence obtained was admissible.

The accused, Raymond Spark, had argued that his section 10(b) charter right was infringed and that the evidence obtained should be excluded. Mr. Spark had been involved in break and enters in the Vancouver area. During these entries the accused wore gloves and a mask. The only evidence left was a partial footprint of a shoe on a piece of glass.

Mr. Spark had been arrested after officers acted on a tip to police. He was taken to a courthouse and a preliminary hearing was held. Mr. Spark was returned to his cell and was met by the investigating officer who took a plaster impression of the accused's foot and took a pair of running shoes that the accused admitted were his.

The court ruled that this did constitute a breach of the accused's 10(b) charter right which states; "Everyone has the right on arrest or detention to retain and instruct counsel without delay and be informed of that right."

The argument debated was whether the incident could be considered a second detention or arrest when the accused was already detained and in custody. The officers felt that this was the case and the accused did not have to be advised of his right to counsel.

The court determined that Mr. Spark was being held for an additional reason above what the original arrest was for. The accused had a lawyer and several Supreme Court cases have stated the officers can not deal with him as though he had not retained counsel. It was therefore the duty of the officers to contact his lawyer or permit the accused to contact the lawyer before taking the statement, the shoes, or the plaster cast.

After this was determined the court stated that the evidence obtained was admissible. It determined that the evidence obtained was real evidence as opposed to a statement taken by coercive means. Chief Justice Leggatt added that in this matter "the officers were working in good faith although with bad advice."

#### A word of caution on '89 Codes

Many companies are presently releasing their new 1989 Criminal Codes. This version of the code has many revisions over previous years and officers should use caution when laying some charges.

Many sections have not yet been proclaimed in force. Officers for some offences will have to consider the dates of the offences when determining which version to consult for the appropriate charge. When in doubt contact your local Crown Attorney's office.

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The charge of careless driving is a greatly misunderstood and much maligned charge. Many people consider it to be a catch-all charge. "If in doubt lay careless" is the phrase jokingly mentioned when some one is asking advice about an accident.

Many officers feel that carelessness is a degree of dangerous driving and as such should be used as a plea bargain tool that can be interchanged easily with it. This is a fallacy that in itself can be dangerous to your prosecution.

A considerable amount of case law exists on the subject of careless driving. We will be presenting some of this to you each month to help you better understand the charge.

### What is careless driving

The charge of careless driving was defined by the Supreme Court of Canada in the case of Archer vs. the Queen in 1955. At that time the offence was re-enacted to incorporate the two methods by which it can be committed. Before this case it was required of the Crown to prove that the defendant either drove without reasonable consideration for others OR without due care and attention. The ruling effectively stated that the Crown did not have to do this. He merely had to prove that one of the two elements was present.

Before "ARCHER" you could paraphrase it by saying the Crown had to call his shots. If an information said "driving without reasonable consideration" and he proved that the accused "drove without due care and attention" than the accused walked.

### The defence to the rescue

You may have heard many defence attorneys refer to the case of Regina Vs. Beauchamp (1953). This is better known as "The grasping for straws" defence. It probably means you have a strong case and the defence knows it. In this case we have an offence that should really be "Start from stop position not in safety." However careless driving was the charge laid. The facts of the case are not important but the judge's ruling is to a degree. What the defence likes about "Beauchamp" is the judge's feeling that the Crown must prove not only that the action was care-

# A history of careless driving

- Edward Gunraj -  
- Morley Lymburner -

*Edward Gunraj has worked for many years as a Provincial Prosecutor in Metropolitan Toronto and attained the position of chief prosecutor before resigning and going into private practice. Previously he has had a distinguished career as a Barrister-at-Law in London, England and as Senior Magistrate in Georgetown, Guyana. Among his many accomplishments is the completion of a complete training package for Provincial Prosecutors. Mr. Gunraj has kindly agreed to assist this magazine in keeping officers up to date on matters as they relate to Provincial Offences. This article is the first of three articles explaining the offence of careless driving and the history of this hybrid offence.*

less but further that "the conduct must be of such a nature that it can be considered a breach of duty to the public and deserving of punishment.... and.... such a lack of care and attention as would be considered to be deserving of punishment as a crime or quasi-crime."

For many years this defence stirred up a lot of mud in the courts. Since this ruling was made in 1953 the courts have blown it out of the water with Regina vs. Jacobsen, Regina vs. McIver and O'Grady vs. Sparling. These basically state that the offence of careless driving is merely an offence that is one of "strict liability" and there is no requirement for the Crown to prove an intent of any kind, just that the offence was committed.

This defence is still brought up on occasion and if a Crown is not sharp it can go by unchallenged.

### Advertent and inadvertent negligence

Several years ago the Supreme Court found that the Criminal Code offence of drive while disqualified was "ultra vires." What this meant was that the Federal Act could not duplicate an offence that was already on the books as a Provincial violation.

In 1960 the same thing was attempted against the offence of careless driving. In O'Grady vs. Sparling the defence attempted to say that careless was the same as dangerous under the Criminal Code. It did not work. The reason cited at that time was that most offences under the Criminal Code have

an element of willful intent attached to them that they termed "Advertent Negligence."

The judge's reasoning in this case was that the Crown is not attempting to prove that the accused set out to drive in this fashion merely, but that he was found doing it. It was pointed out that if it is proved that the defendant mounted the vehicle with intent to drive in a careless or reckless manner then the violation is criminal in nature.

What is important to remember is that sometimes your case can be too strong. You just might go beyond carelessness and into the realm of intentionally driving in the manner they did. Once you have done this you may lose your careless charge. This is when you hear the judge state such things as "I find the action described was dangerous but not careless."

If you find a judge who states this do not entertain laying a dangerous charge. You are only allowed one "kick at the cat." If you fail then the accused walks. Many of the old time JP's would hear many charges of careless driving that should have been dangerous driving. They would convict for careless on the feeling that the officer gave the accused a real break by not going criminally. Those days are gone. Think about your evidence before you proceed to trial. A good prosecutor may help you if you are in doubt.

Next month Careless Driving - Part II

## CASE LAW: SEARCH WARRANTS

### Search warrant times found to be unclear

(Pars Oriental Rug Vs. A.G. Canada)

Officers involved in search warrant activities should be aware of a decision handed down in Vancouver this past summer.

In this case officers raided the Pars Oriental Rug store in Vancouver armed with a search warrant for a quantity of oriental rugs. The officers felt the business had failed to pay import duties on the items so they entered the premises and commenced to seize what later amounted to 800 rugs. The warrant was later quashed and the rugs ordered returned.

The officers obtained the warrant which authorized them to enter the premises between the hours of 9:30 A.M. and 6:00 P.M. and search and seize the items mentioned. The officers continued to search and seize items up to 6:00 P.M. and they were then advised the time limit on the warrant had expired.

The officers disagreed and continued on.

At 6:45 P.M. a lawyer for the business acquired a Supreme Court injunction in an *ex parte* proceeding after asking if the term on the warrant indicated an expiry time. Supreme Court Justice R.M. Paris agreed that there was some ambiguity in the standard wording of the warrant and that this ambiguity must work in favour of the defendant. He thus ordered that items seized after this hour were to be returned to the owners.

The Crown is not certain if it is going to appeal the decision as the evidence obtained before 6:00 P.M. was adequate to render a guilty verdict. Officers are advised that this little problem does exist and that they should note the wording on their search warrants.

## CASE LAW: DEFENCE

### Accused had no "colour of right" to wood

The Supreme Court of P.E.I. recently convicted a man that took some wood while employees watched and did nothing. At the original trial the accused successfully defended himself by convincing the trial judge he had no intent to deprive the owners of their right or interest in the property.

In the defence the accused advised the original trial judge that he had seen the wood stacked by the side of the road for a "long time" and felt that the owner of the land did not want it. He backed his truck up and started loading it while employees of the land owner watched. At no time did they object.

The trial judge believed this and acquitted the accused. The Crown appealed and Mr. Justice McMahon of the Supreme Court stated, "He may honestly have thought that the owner of the wood was not going to use it but this fact does not take it out of the definition of

theft and he has no defence on the ground of colour of right."

The judge advised that even though the employees made no objection at the time, the accused never did ask for permission to take the wood.

## Police Public Complaint Bureau



"Oh, things that happened the week after next," the Queen replied in a careless tone. "For instance, now," she went on... "There's the King's Messenger. He's in prison now, being punished; and the trial doesn't even begin until Wednesday, and of course the crime comes last of all."

"Suppose he never commits the crime?" said Alice.

"That would be all the better, wouldn't it?" said the Queen...

Alice felt there was no denying that. "Of course, it would be all the better," she said; "but it wouldn't be all the better his being punished."

"You're wrong *there*, at any rate," said the Queen; "Were you ever punished?"

"Only for faults," said Alice.

"And you were all the better for it, I know!" the Queen said triumphantly.

"Yes, but I *had* done the things I was punished for," said Alice; "that makes all the difference."

"But if you *hadn't* done them," the Queen said, "that would have been better still; better, and better, and better!" Her voice went higher with each "better," till it got quite to a squeak at last.

Alice was just beginning to say, "There's a mistake somewhere--," when the Queen began screaming, so loud that she had to leave the sentence unfinished.

-Lewis Carroll,

*Alice Thru the Looking Glass*

## New anti-radar warning device group

Five national U.S. organizations recently formed a coalition to educate the public about the highway safety problems caused by radar detectors.

GUARD (Group United Against Radar Warning Detectors) will work to encourage state legislators to ban them.

The American Driver and Traffic Safety Education Asso-

ciation, GEICO Corp., The International Association of Chiefs of Police, the National Association of Independent Insurers, and the National Safety Council make up GUARD.

"There is only one reason to use a radar detector," says GEICO Vice President August Alegi, "that is to break the law without getting caught."

**O**rigins: England, 1949, was the birthplace of the International Police Association, which was officially constituted in January 1950. During the fall of 1949, many letters were exchanged between the founder, Police Sergeant Arthur Troop of Lincolnshire, England and contacts in nearly every country in Europe.

Arthur Troop wrote to all countries in Europe and, one by one, National sections were formed. Subsequently, in 1955, the first international meeting was held in Paris, France. Arthur Troop was elected to position of the first International Secretary General and Mr. Andre Roches was elected to the position of International President.

Three years later, an International Congress was held and Chile became the first country outside Europe to apply for National status.

In December 1960, a group of 52 police officers met in London, Ontario and formed the Canadian National Section with Charles Wright of London, Ontario as its founder.

**Status:** The Canadian Section today has members throughout Canada in nine regions, based in London-Ontario, Toronto, Windsor, Vancouver, Calgary, Edmonton, Winnipeg, Montreal and Quebec City.

The International Police Association is a Police organization, not attached to the official side, dedicated to the promotion of brotherhood, friendship, and understanding between police officers throughout the world and has as its motto, "Servo per Amikeco", which translated from Esperanto means "Service through Friendship".

At no time has the association taken part or has it any desire to take part in any matter of politics or discipline. In other words, we are not a union or federation. It permits no discrimination of race, creed, sex or colour and its members include all ranks, from the Chiefs or Commissioners to the newest recruits. There are, at present, nearly 200,000 members throughout the world.

**Travel and hospitality:** Each section has put its travel and holiday exchange facilities on a properly organized basis and established a travel bureau. The Canadian section receives many visitors from all parts of the world and is responsible for arranging visits abroad. As a policeman once wrote in the Association's magazine, "Travelling abroad as an individual was

# What is the I.P.A.?

-Paul Dean-

like travelling in a thick fog. Travelling as a member of the Association was like travelling in clear sunshine. Everywhere I was welcomed, helped and treated like an old friend. The experience was wonderful". In the United Kingdom and Europe many sections have purchased or leased properties and now provide IPA houses, apartments, caravans and camping sites for the use of members who wish to travel.

**Social events:** Sections worldwide arrange festivities in the form of anniversaries or "friendship weeks", athletic meets or friendly competitions. Toronto's Region Two holds a three-day social event called "Can-Am", which takes place during the Canadian National Exhibition in mid-August. Members from both sides of the border meet to socialize and take in a day at the "Ex", go on a trip to a local interest spot, hold a dance, etc. The Buffalo, N.Y. section is renowned for its Christmas dinner and dance.

Hobbies are catered for, especially badge and patch collecting, which seems to be an eternal favourite with all officers. Pen pals, stamp collecting and now, of course, computer communications, are popular.

**Conclusion:** Undoubtedly, police officers have always been good hosts to their colleagues. The International Police Association has served only to organize that spontaneous hospitality and so to provide the facilities for both the serious exchange of professional knowledge and the pleasantries of friendship.

## Who may join IPA?

Any serving member of a recognized police force or of the Canadian Armed Forces Military Police, any serving auxiliary member of a police force, and any ex- or retired member of a force with at least five years service and honourable discharge.

## Is there any segregation of rank structures in IPA?

NO! Any police officer, regardless of

rank, race, colour, sex or creed may join IPA.

## What benefits do I derive from membership?

Membership entitles you to full participation in any and all programs; local, national and international, and to an international I.D. card, lapel pin, car decal and other such insignia.

## What facilities has the IPA for its members?

International pen pals, Group visits to places of interest, National and International holiday exchanges, Philatelic Section, Radio Network Section, Police Badge collecting.

## Is my own force represented by IPA?

Most probably, yes; through a Force representative who is a member of the local IPA region.

## What is the disbursement of funds collected by IPA?

IPA is a non-profit organization, with part of membership dues going to the International Executive Fund, to enable representation on a global basis, part to the National fund and the balance to the Region, to defray the costs of administration and the monthly magazine.

## What does it cost to join IPA?

\$25.00, including the cost of a lapel pin, car decal, membership card and the monthly magazine. Annual renewal is \$20.00, payable before April 30th of each year.

## How can I join IPA and where can I get further information?

In Region Two, which covers most of central Ontario, write to me, the Membership Secretary, Paul Dean, 208 Gledhill Ave., TORONTO, Ont., M4C 5L1 Phone: (416) 423-5198

I will be pleased to advise you of your local IPA region anywhere in North America.

**SERVO PER AMIKECO !**



## Accused's refusal needs no explanation

(Regina Vs. Ferron)

A suspected impaired driver does not have to give an explanation when he refuses to supply a breath test. A British Columbia County court judge ruled against the Crown on this case recently.

The accused had been arrested and taken into a police station for the Breathalyzer test. He was given the telephone to contact a lawyer and the accused called him at his home. About one minute went by and the accused hung up the phone. He was asked by the arresting officer if he had spoken to his lawyer. He explained he had not.

About 15 minutes later the accused was given a second chance to call his lawyer and at this time the call last about 30 seconds. After hanging up, the accused was escorted into the Breathalyzer room and a sample of his breath demanded. The accused refused the test and he refused to say anything further.

The officers released the accused on a promise to appear about an hour later. On the trial date the defence

advised the court that he had refused because he had not spoken to his lawyer first and wanted to do so. When he called on both occasions he got a recording saying the lawyer would call back.

The presiding justice in the county court determined that there was no requirement for the accused to say anything to the officers as to why he was refusing to supply. The only time he would be required to state why he refused would be in defence at trial.

The judge was quick to add that this type of judgment was not condoning all accused to remain silent in a stand-off situation with the police until the last minute. She added that in this particular case it was apparent that the officers had not asked if the accused had ever obtained the advice of counsel on the second call. It was their duty to ensure that this wish was fulfilled.

It was uncertain if this matter would be appealed but officers should be aware of this tactic.

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## Most drivers don't sit properly

- Charlie Goodman -

The next time you get in your car to drive somewhere, there's a 90 per cent chance you will have made a major driving error before the car even moves.

That's a tough statistic to swallow, but it's the sad truth about some otherwise excellent drivers. They don't sit properly!

Your position as driver can be a big contributor to your success, or the reason that you continually get into trouble despite the best training and careful planning. Here's a guide to how you should be placed every time you get behind the wheel.

### YOUR FEET

Your feet should not only comfortably reach the pedals, you should be able to touch the floor all of the way under the brake pedal and still not have your leg fully extended.

To be able to really apply pressure to the brake pedal - important in lock-up

braking or when brake "fade" takes the pedal much lower than normal - you need to be able to use the full power of your leg muscles. You can't do that when your leg is already fully extended. This is probably closer than you are accustomed to sitting. The other foot should be comfortably planted on the firewall.

### YOUR HANDS

Check the position of your hands on the wheel and how your arms are extended. Properly seated, your hands should be on opposite sides of the steering wheel at three o'clock and nine o'clock positions.

A good driver using his hands in the mentioned positions will position his seat back far enough to allow the arms to bend and rest comfortably by his or her side.

The object here is to have the arm muscles do the work without tensing

the neck, shoulders or back muscles. The adjustable back rake feature in many modern cars is a useful addition for this purpose.

### TEST YOUR POSITION

You can test your position by turning the wheel as far as you can in either direction without taking your hands off the wheel. If your shoulders pull away from the seat with the wheel turned and your arms crossed, you're too far away from the steering wheel.

With so many potential dangers lurking out there on the road, shouldn't you start out with every advantage you can?

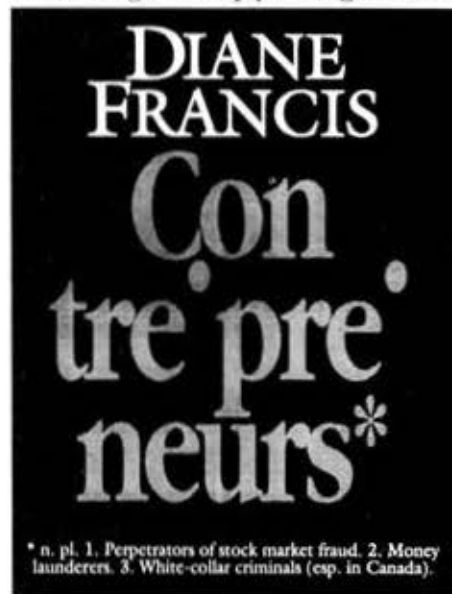
*Charlie Goodman is the founder and chief instructor of the Nissan School of Advanced Driving at Ameliasburg Ontario. He has been teaching the fine art of driving to new and experienced drivers for nearly a decade.*

In her new book "Contrepreneurs", Diane Francis reveals Canada as a world leader in an unusual commodity: white-collar crime, a commodity that it exports around the world. Canada's contrepreneurs have swindled billions of dollars from business and investors in dozens of countries, using computer technology, secrecy havens, fake companies, and insider trading techniques. They also provide valuable money-laundering services to the world's criminals by taking advantage of Canada's lax currency regulations.

In *Contrepreneurs*, Diane Francis looks at three types of entrepreneurial activity: boiler rooms, stock-market swindles, and money laundering. Part I shows how a handful of crooks, many of them Canadians, bilked investors in Europe, the Middle East, and Australasia out of \$6 billion in the early 1980's, by selling them phony or overpriced stocks over the telephone from Amsterdam. This type of "telemarketing" is a lucrative and well-nigh untraceable method of swindling, and boiler rooms are springing up in many other European countries and on Caribbean islands.

Part II examines the business of stock-market scams, many of which are run through the Vancouver or Alberta stock exchanges, where regulation is

much more relaxed than in Toronto, Winnipeg, or Montreal. Not only have swindlers got rich by peddling stock in



"moose pasture" or dubious high-tech companies, they even managed to bring

## BOOK REVIEW

# Contrepreneurs

down a British MP, Jeffrey Archer, and have preyed on King Hussein of Jordan.

Part III investigates the time-honoured Canadian custom of laundering money, that is, getting the ill-gotten cash of crooks into the financial system so that it can be spent or invested, or hiding the money of businesspeople from tax collectors, business partners, ex-wives, or police.

Diane Francis argues that Canada needs tougher laws, better-trained investigators, and tighter stock-market regulations to clean up Canada's "financial slums." *Contrepreneurs* are a far cry from smash-and-grab thieves. They are often well-educated, well-connected con artists who use their brains, imagination, and financial know-how to pull off scams that net them hundreds of thousands of dollars for a few weeks' work. The laws protecting investors and the training of white-collar cops must be equally sophisticated to catch up with these master criminals.

Highly recommended reading.

## New Motor Vehicle Repair Act proclaimed

The Province of Ontario has passed into law a new regulation that provides protection to motor vehicle owners who need repairs performed on their cars.

As of October 1st, 1988, the Motor Vehicle Repair Act came into force. Under the new legislation all establishments that repair motor vehicles will have to do what Canadian Tire advertises that it does: "No surprises and nothing unexplained."

Under the new Act all repair outlets will be required to post signs stating repair rates and the methods used to calculate the charges. Other sections state that written estimates must be provided on request; Customers must be advised, in advance, if there is a fee

for an estimate and the amount of the fee; The actual repair cost cannot exceed 10 per cent of the written estimate without authorization; The repairer must offer the return of removed parts to the consumer when the work is authorized; A warranty must be provided on new or reconditioned parts and associated labour for a minimum of 90 days or 5,000 kilometers.

Body shops are dealt with severely in this Act. As well as the rules previously stated they are also prohibited from charging more to insurance companies than to the public.

It is believed that this will go a long way toward lowering insurance costs as the insurance companies have the legal people that would check up on this.

### Regional correspondents wanted

Do you have an interest in the police profession? If you do and you have a talent or interest in some facet of police work we would like to hear from you.

We are interested in people who can write to communicate and not just to impress. Whether you would like to write about your specialty, experience, training, humour or become a free-lance writer from your area we would like to hear from you.

Another line of interest for us is art. Specifically a cartoonist or sketch artist. If you are talented in this area and would like to contribute please let us know.

If you are interested we would like you to send us a brief resume about yourself, a photograph if available, and a sample of your writing or material. Please send to **Blue Line Magazine**, 118 Main Street North, Markham, Ontario, L3P1Y1.

# STREET SURVIVAL Tactics for armed encounters

- Courtesy of Calibre Press -

Each month we will be presenting you with edited excerpts from a text book written by Charles Remsberg, Ronald Adams, and Thomas M. McTernan of Calibre Press. This was the first of two books produced by them, designed to teach officers survival tactics. Officers interested in purchasing this 400 page text may do so by calling Calibre Press direct at (312) 498-5680 or in Canada from Green Gables Book Shop at (416) 294-4773.

The ways and circumstances in which criminals take on officers in gun



fighters have varied amazingly little since police first began to carry firearms in the middle of the 19th century. The first police killing recorded in New York City, in 1854, occurred after a baker interrupted two "juvenile delinquents" burglarizing his establishment.

"The rogues escaped," says the official report of the incident, "and were closely pursued by Patrolman Cahill. He immediately closed in with

the rascals and a struggle ensued ... Several pistol shots were discharged... The officer gave a groan, sank to the ground and expired a few minutes later."

Today, only the names and some of the language are different, the occupation of law enforcement remains exactly the same. Throughout the country, officers still are killed in bars, stores and homes, on sidewalks and highways, in alleys and gutters, predominantly by guns.

More than 70 per cent of the time, the fatal confrontations erupt during so-called "routine patrol," and especially when officers are:

- attempting arrests
  - responding to domestic disturbances
  - investigating robberies-in-progress, and
  - conducting traffic pursuits and stops.
- (The degree of danger within these broad categories may vary with circumstances. The danger of domestic disturbances, for example, tends to be heightened when only one officer is on the scene; robbery-in-progress calls are apt to be more dangerous to officers in concentrated urban areas than to rural areas, where the distance an officer must travel in responding often allows the suspect time to flee.)

## Nothing has changed

What's especially disturbing is that officers to-day still resemble those from the decade before the Civil War in another way: incredibly, they are making the same tactical errors in regard to armed confrontations. These persistent mistakes, in most cases, are directly responsible for the toll of officer injuries and deaths.

After more than 100 years of consistency in the circumstances and outcomes of officer-involved shootings, many departments are finally beginning to recognize the core problem: a large gap exists between the training most officers receive in how to defend their lives and the kinds of challenges to



their defence they actually confront on the job. In short, the patterns of instructions don't match the patterns of encounter.





### The range and the street

Most initial recruit range training and subsequent qualification requirements, for example, focus overwhelm-

ingly on shooting stationary paper or metal targets at a distance of 21 to 150 feet. The action is slow and deliberate. After shooting each round, you may be told to re-holster your gun, and when you reload, you're cautioned to dump your brass in a bucket or put it in your pocket to keep the range tidy.

But, real life-or-death episodes, as survivors are quick to point out, are drastically different. Shoot-outs tend to be at close quarters, quick and dark. Your target shoots at you ... and moves. While you're trying to duck bullets, see him and fire back, you may be scrambling for footing on ice, trying to keep your balance on a rickety fire escape, or fending off stones and bottles. Your gun may be wobbling, because you're panting and trembling from the exertion of a chase. To reach cover, you may have to roll through a patch of broken glass. You may face multiple suspects in different locations and with more powerful guns than yours, all firing at once. You may become wounded and start pumping blood. Or at the split-second you need to shoot to save your life, your gun may malfunction.

For certain, when you are under sudden stress and fear, you revert without thinking to the habits you have learned in training. Unless you have trained realistically, this alone may cost you your life.

### Conditioned response

In a notorious highway patrol incident, four officers were killed in a gunfight that broke out during a felony stop. After the shooting was over, one of the dead officers, who had reloaded during the shoot-out, was found with spent cartridges in his trouser pockets. Under fire, he had unconsciously taken precious seconds to do what he had learned on the range: eject his empties into his palm and stuff them into his pocket before reloading live rounds.

No one should underestimate the importance that the basic fundamentals of marksmanship can play in armed encounters. But they should be regarded as the foundation, not the finished product, of survival expertise. And they should be utterly free of the practices that may be convenient to the range staff, but jeopardizing to the officers in whom they have become ingrained. (such as putting empty cartridges in your pocket to avoid cluttering up the grass.)

### Modern training

Some agencies have modernized their firearms training to include instinct shooting, dim-light firing, stress courses and close, multiple and moving targets in simulated street situations. Some, in doing so, have been startled to discover that officers who have been winning target shooting trophies often are unable to hit "combat" targets at 8 to 10 feet, particularly when the targets are moving. In most jurisdictions, however, range facilities remain inadequate, instruction minimal and the techniques conveyed too outmoded or unrealistic for practical application.

### Next month

**"Street Survival" will statistically brief you on what circumstances you will probably find yourself when being involved in a shooting incident.**

**Topics will include distance, light conditions, time of incident duration, location, weapons and the type of assailants you could encounter.**

# Learn New Survival Tactics to Defeat Edged Weapons!



Law enforcement injuries from edged weapons are up 92% in the last 10 years - and still skyrocketing! New immigrants from Latin and Asian countries... growing interest in martial arts... more crazies on the streets... and

a deepening criminal preference for "The Blade" have brought a "Knife Culture" to your beat that has you as its target. Now this unique videocassette, SURVIVING EDGED WEAPONS, gives you IMMEDIATE in-service training to keep from being maimed or killed..

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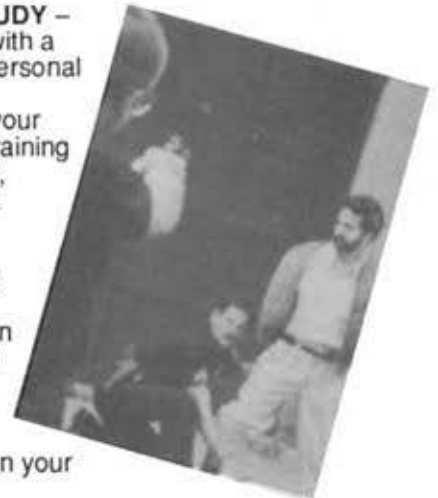
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## Provincial Complaints Board to start in '89

The Ontario government has planned to begin a province wide Police Complaints Board in 1989. The new Board will come under a re-structured Ontario Police Commission and be responsible for complaints against all police agencies in Ontario.

The new organization will be headed by Mr. Douglas Drinkwater, a former crown attorney and director of the Ontario Police College in Aylmer.

The mandate of the commission will be to handle complaints against the police and recommend long-term policies for all police forces in Ontario. The staff will be mostly civilian and aided by retired or active police officers. They would also handle internal problems with police forces. "No matter how the situation is resolved," Solicitor General Joan Smith stated, "there is often a perception that police will always favour other police. Under this system the commission will be completely on the outside of that process, and it will be able to be viewed as dispassionate in their judgments."

It is uncertain at this time if the Metropolitan Toronto Police Complaints Board will be incorporated into this panel.

## Ontario Law Reform Commission begins provincial law study

The Ontario Law Reform Commission has recently initiated a project dealing with the basis of liability for various types of Provincial Offences. The Commission will examine the role of negligence, mens rea, and absolute liability - that is liability in the absence of fault - in the context of provincial offences.

Among the specific issues to be canvassed will be the following: (1) whether new provincial legislation should be enacted to reflect the Supreme Court of Canada's decision that, as a general proposition, absolute liability offences are unconstitutional where there is a possibility that the offender will be deprived of life, liberty, or security of his or her person; (2) whether

provincial law should go further, to provide for the abolition of all provincial absolute liability offences, whatever the sanction; (3) and whether, given the constitutional imperative of fault (at least where imprisonment is a threat), subjective fault (mens rea) or objective fault (negligence), or some mix of both, should be imposed in respect of provincial offences and, if there is to be a mix, how it should be determined which offences fall into each of the two categories.

The Commission has prepared an Issues Paper on the basis of liability for provincial offences, which discusses in more detail the foregoing matters, as well as other related matters, and seeks answers to ten questions posed at the conclusion of the Paper. If you are interested in assisting the Commission in its deliberations, please write for a copy of the Issues Paper to: "Ontario Law Reform Commission, 15th Floor, 18 King Street East, Toronto, Ontario M5C 1C5.

## Join the TAC Team "Your place then mine"

Here is a great idea for all members of any law enforcement agency. It is called the T.A.C. Team. No! It is not a special tactical unit but it could be viewed as a stress reduction squad. It is short for "Travellers Accommodation Connection". Its publication is called

"The T.A.C. Team Trader."

This magazine is published twice yearly and distributed exclusively throughout the North American law enforcement community. It has become quite popular in the U.S. and is quickly spreading here in Canada.

The magazine contains a listing of colleagues' homes, cottages, boats, RVs and trailers for the purpose of accommodation exchange, rental, or shared accommodation (maybe you have a room or spare bed within your own home you could rent or exchange with a colleague..).

T.A.C. Team is unique in that it is the only company that introduces law enforcement organization members to their colleagues' properties in a magazine format.

HERE IS HOW IT WORKS: 1. Subscribe and/or list by filling out the application which can be obtained by writing to: 7 Diane Drive, Orangeville, Ont., L9W 3M7, or by calling (519) 942-0283; 2. Supply written proof of membership in a law enforcement organization. This is required and they protect the confidentiality of the subscribers by omitting any personal information in the magazine; 3. If you wish to respond to an ad in the magazine you send a letter, in a stamped envelope and addressed to the ads' assigned code number, to the T.A.C. Team and they forward it to the proper address.

The T.A.C. Team Trader is available by subscription only and is published by a former police officer in Orangeville. You can read more in the advertisement supplied in this issue. Sounds like a great idea.





# Traffic Court case law

- Jim Bardgett -

*Jim is a Training Constable with the Metro Toronto Police Force. He has worked in the Traffic function for the past ten years.*

This is the first of a series of articles centering on the most frequently laid charges laid in accidents under the H.T.A. He will be presenting you with a description of the offence along with pertinent case law from Canadian Courts as it relates to these offences.

## TURN - NOT IN SAFETY [H.T.A. 122]

Briefly this offence covers vehicles turning left or right at any intersection or into a private driveway. It is also for vehicles leaving the roadway. They must all be sure that such motion can be made in safety. They must not affect any other traffic and they must signal their intention if it could affect any other traffic.

This section covers two specific offences which include the actual turn and signaling a turn from a parked position. Don't get this section mixed up with section 121(4). This is Left Turn -

Fail to afford reasonable opportunity to avoid a collision.

Turn - Not In Safety is easier defined and much easier to prove. It is recommended to lay this charge when dealing with an intersection type accident.

Dealing specifically with the turn part of the section there is case law which clearly spells out the drivers obligations and his imminent liability when turning.

If a collision occurs it doesn't necessarily have to be between the vehicle turning left or right. For example in a Nova Scotia case (Bain Vs. Winters N.S.C.A. 1942) the defendant first saw the plaintiffs car approaching from the opposite direction after she stopped almost immediately when making a left turn. The plaintiff, in an effort to avoid a collision, drove close to the edge of the highway and struck a post. The defendant was held liable as she was in breach of the requirements of the section.

As well in this section the driver is required to yield to vehicles coming from behind as well as approaching vehicles, (bicycles included). As in the New Brunswick case Guilmont Vs. Williston (N.B.C.A. 1980) - A driver who turned simultaneously with signaling, collided with a cyclist who he failed to notice passing on the right, was held to have failed in his duty to warn others of his intentions.

This would include vehicles coming from behind and to the left of the vehicle turning left, even if he is coming up on the wrong side of the road or driving left of centre.

This section I find is mostly used at signalized intersections and vehicles turning left. If an accident occurred when a vehicle turned left, and the approaching vehicle went through the intersection on an amber or red light, the onus is still on the vehicle turning left. This is because he was in the intersection first and has an obligation to comply with section 122 and 121.

Although you list the second vehicle as driver number two, there is no reason why you should not charge him as well with disobeying the traffic light.

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**W**hat is the make-up of a person who would deliberately take his own children out for a walk, knowing neither of them will return? What sequence of events goes through his mind and what has brought him to this stage?

On a June afternoon in the year 1913 near Linlithgow in Scotland the bodies of two people were seen floating in a water-filled quarry by two men out for a walk. The quarry itself was in a secluded place, and it was by mere chance someone would happen by to discover the bodies.

Their bodies had been tied together with cord. They were pulled from the quarry and the police were called.

An autopsy determined the bodies were those of two young boys, one aged 6 or 7 and the other 4. They had been dead for one and a half to two years and their bodies badly decomposed. This would put the time of death around 1911.

After examining the bodies, the clothes were then carefully checked. Other than the fact that the clothes were of poor quality, little was gleaned by the examination until a close look at one of the shirts revealed a stamp of a poorhouse in the town of Dysart in the county of Fife.

The police made inquiries in that area and came up with several important facts. In November on 1911, two boys had disappeared from that area, never to be seen again. Their ages were seven and four and the names of the boys were John and William Higgins.

Both boys were born into a poor family. Their mother died in 1910 and the care for the two boys was entrusted to the father, Patrick Higgins. Higgins was hardly a model parent. He was a heavy drinker and had neglected his family even before the death of his wife.

After the death of his wife, Higgins continued his habit of spending most of his pay on booze. He had served as a soldier for some years, most of his service being in India. Upon being discharged he returned to Winchburgh in the county of Fife and had obtained employment in the local brickworks.

At his best he was a poor provider and on a number of occasions his two boys had to receive assistance from the local poor works to sustain them. Higgins had been warned a number of times about non-payment and lack of

## True Crime

# The Demon in the Bottle

- Geoffrey Cates Books -

support and had even been jailed for a short period of time for this. However his passion for drink overrode his duty, if he felt any, for his children.

A local woman was now looking after his children while he was at work. Higgins made no effort to pay this woman and there was a strong possibility of the county laying a second charge against him with an even longer prison term.

It was shortly after this threat that Higgins was seen leaving the town and walking towards the countryside with the two boys. Higgins returned alone. The two boys were never seen alive again.

Higgins was asked by his friends on different occasions as to the whereabouts of the children. He gave different answers. To one he stated they had gone to relatives in Canada. To another he told him he had met two ladies from Edinburgh and that, taking a liking to the boys, had offered to take them with them. He said he had agreed and the boys were now living with these two mysterious ladies in Edinburgh.

From the evidence of the autopsy and the suspicious nature of the story offered by Higgins regarding his boys, Higgins was arrested and charged with murder.

His trial was held at Edinburgh. As a result of the publicity surrounding the case, the courtroom was packed. The defence entered a plea of not guilty. Now whether or not they felt their case was not particularly strong (which it was not) or were merely hedging their bets, a plea of insanity at the time was also put forward. The defence alleged Higgins was rather weak-minded and suffered from epileptic fits. They gave these reasons for his discharge from the army.

As is usual to-day, was usual even then in a court of law. The prosecution had it's experts testify Higgins was sane at the time and the defence brought

forth rebuttal witnesses who said it was their opinion he suffered from some mild form of insanity due to epilepsy and was not of sound mind when the tragedy occurred.

It was up to the jury to decide sanity or insanity and these were the instructions from the bench. However the supporting evidence from the autopsy and the different stories Higgins had concocted about what had happened to the boys proved too overwhelming for the defence. A unanimous verdict of guilty was brought in with a recommendation for mercy. The trial judge, however, disregarded the recommendation and pronounced a sentence of death by hanging.

So Patrick Higgins was to pay with his life for his actions that fateful day in November when he led his two young boys out of town to the deserted quarry, tied them up and pushed them into a watery grave.

There was no reprieve for Higgins and on the 1st of October 1913, he was hanged. We do get some insight as to how Higgins could reach such a tragic end. Directly after his death, the press were told Higgins did not dispute the sentence passed upon him and that excessive drink had been the cause of his moral decay. He told the attending priest just before his hanging that, "Drink and, through drink, neglect of religion have brought me down." While in prison he was repentant of his deeds and thanked the warders for their kindness towards him. He accepted, without flinching, his execution.

*Geoff is a Constable working out of Eastern Traffic Unit, of the Metro Toronto Police Force, in the capacity of a Breath Technician. In his spare time he runs a hobby/business dealing in out of print and rare true crime books. Sort of an antiquarian book seller with a specialized interest. Geoff advises that he would be happy to give anyone a quote on the value of a book, or even track down that rare crime book you have been looking for. Give him a call at (416) 432-1866.*

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