

# INVESTIGATION AND ARREST

## Key Terms

physical evidence  
forensic science  
arrest procedures

## Key Questions

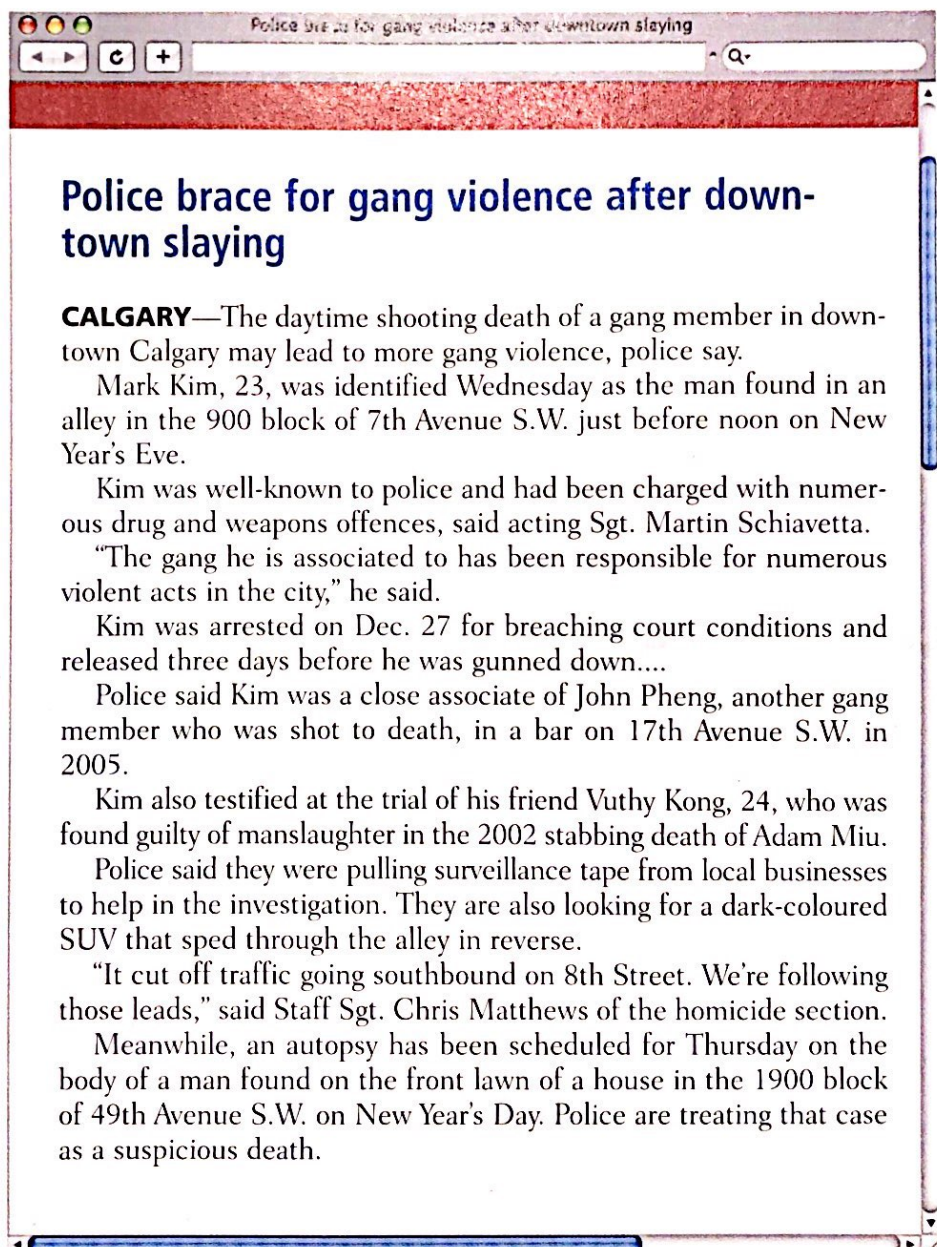
What are the different levels of policing in Canada?

How do the police investigate crime?

How is physical evidence collected?

What are the elements of a legal arrest?

Which release procedures are available to defendants awaiting trial?



**Police brace for gang violence after downtown slaying**

**CALGARY**—The daytime shooting death of a gang member in downtown Calgary may lead to more gang violence, police say.

Mark Kim, 23, was identified Wednesday as the man found in an alley in the 900 block of 7th Avenue S.W. just before noon on New Year's Eve.

Kim was well-known to police and had been charged with numerous drug and weapons offences, said acting Sgt. Martin Schiavetta.

"The gang he is associated to has been responsible for numerous violent acts in the city," he said.

Kim was arrested on Dec. 27 for breaching court conditions and released three days before he was gunned down....

Police said Kim was a close associate of John Pheng, another gang member who was shot to death, in a bar on 17th Avenue S.W. in 2005.

Kim also testified at the trial of his friend Vuthy Kong, 24, who was found guilty of manslaughter in the 2002 stabbing death of Adam Miu.

Police said they were pulling surveillance tape from local businesses to help in the investigation. They are also looking for a dark-coloured SUV that sped through the alley in reverse.

"It cut off traffic going southbound on 8th Street. We're following those leads," said Staff Sgt. Chris Matthews of the homicide section.

Meanwhile, an autopsy has been scheduled for Thursday on the body of a man found on the front lawn of a house in the 1900 block of 49th Avenue S.W. on New Year's Day. Police are treating that case as a suspicious death.

Why are witnesses so important to cases like this? What can police do to encourage witnesses to speak up? How can the police protect witnesses and people who testify in criminal trials?



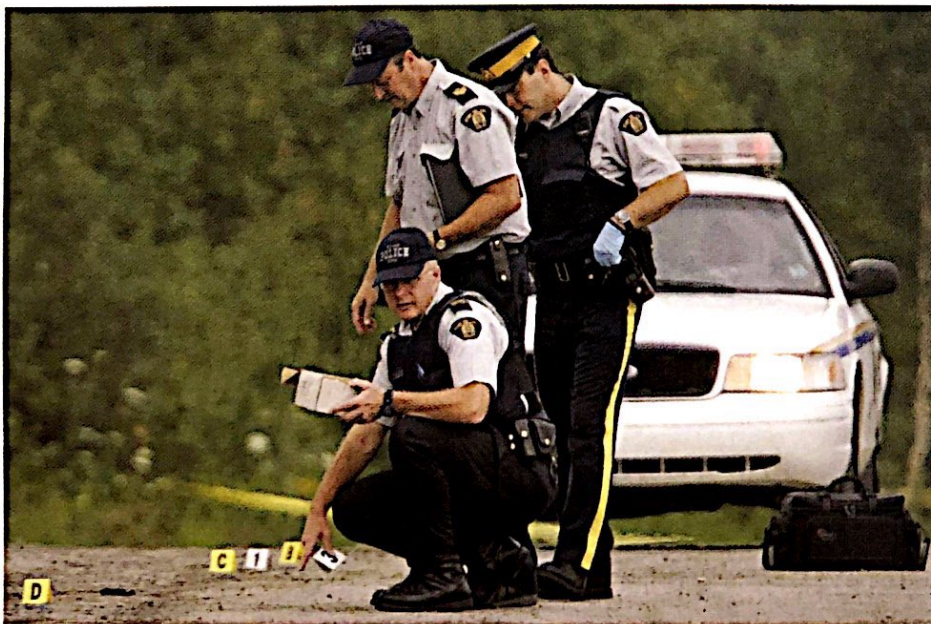
**H**ave you ever wondered what steps the police take to investigate a crime? Did you know that specific procedures govern the careful collection of evidence and that the police must follow strict rules when arresting and questioning a suspect? This chapter will discuss the different levels of police forces in Canada. You will learn how the police investigate crimes by collecting evidence and questioning suspects. You will also examine the elements of a legal arrest and explore different types of pretrial releases that are available to defendants awaiting trial.

## LEVELS OF POLICE IN CANADA

Although Canada has an intricate network of courts and costly prisons that house thousands of criminals, the most expensive component of the criminal justice system is policing. In 2007, Canada's police forces cost about \$10 billion annually and included almost 64 000 police officers at three different levels: federal, provincial/territorial, and municipal. Since the 1970s, Aboriginal police forces have served many Aboriginal communities, providing greater sensitivity to the needs of the people.

### Federal Police

The Royal Canadian Mounted Police (RCMP) was formed in 1873 as the North West Mounted Police. The RCMP, or "Mounties" as they are popularly known, make up the federal police force of Canada. They provide investigative and protective services to the federal government and serve as the provincial police in all provinces and territories except Ontario, Québec, and Newfoundland and Labrador. In some communities, they also serve as the municipal police.



### Fast Fact

While women represented less than 1 percent of all police officers in 1967, their proportion had grown to 18 percent by 2007.

**Figure 7.1** An RCMP officer and two Halifax Regional Police officers investigate the scene where two bodies were found, about 15 kilometres west of Halifax. Why do you think both police forces would be involved in this case?

In Nunavut, the Yukon, and the Northwest Territories, the RCMP is the only operating police force, although this arrangement may change if Aboriginal forces are established in these territories. The RCMP is responsible for all federal law under the *Criminal Code* as well as federal regulations. More specifically, the RCMP's federal policing mandate covers the following four areas:

- 1) Border Integrity
  - Customs and Excise Program
  - Immigration and Passport Branch
  - Integrated Border Enforcement Teams (IBETs)
  - Federal Enforcement Program
  - Marine and Ports Branch
- 2) Drugs and Organized Crime
  - Drug Enforcement Branch
  - Organized Crime Branch
  - Drugs and Organized Crime Awareness Service
- 3) International Policing
  - International Operations Branch
  - International Peace Operations Branch
  - INTERPOL Ottawa
  - International Travel and Visits Branch
  - International Affairs and Policy Development
- 4) Financial Crime
  - Commercial Crime Branch
  - Proceeds of Crime Program
  - Integrated Market Enforcement Teams (IMETs)

Policing in the above areas is not done exclusively by the RCMP. Provincial and municipal police forces and other provincial and federal agencies often work together to enforce the law in these areas.

## Provincial Police

Provincial police forces have jurisdiction in rural areas and in unincorporated regions around cities. The largest of these forces is the Ontario Provincial Police (OPP), followed by the Sûreté du Québec and the Royal Newfoundland Constabulary. As noted previously, in all other provinces and in some parts of Newfoundland and Labrador, the RCMP operates as the provincial police.

Using the Ontario Provincial Police as an example of a provincial police force, consider these responsibilities as outlined in the *Police Services Act*:

- policing municipalities that are not required by law to maintain their own police force;
- responding to municipal police requests for special assistance in emergencies;

### Law in **Your** Life

Would you like to find out first-hand what it feels like to be a police officer? At the OPP Museum in Orillia, Ontario, you can examine specialized police equipment or even participate in police work at the interactive computer station.





**Figure 7.2** These OPP officers are operating a boating spot check for alcohol consumption in cottage country. Alcohol is a major contributor to boating accidents.

- providing traffic control on all 400-series and major highways, including those sections that are within the jurisdiction of municipal police forces;
- providing investigative services, on request, to the coroner's office and to other provincial ministries; and
- performing other assigned duties, such as maintaining the provincial firearms registry, providing security at Queen's Park, and protecting Ontario government officials and dignitaries.

## Municipal Police

Municipal police forces have jurisdiction over policing in towns and cities throughout Canada. Each municipality funds its own police force. Smaller communities that do not have municipal funds for their own forces use the services of the provincial police or the RCMP.

A municipal police force is usually organized into numbered divisions that service the local community. The divisions, in turn, are divided into squads that specialize in certain types of crimes. Examples of these squads or units include the Gang Crime Unit, the Robbery Squad, the Homicide Squad, and the Explosives Disposal Unit.

A municipal police officer's duties may include any or all of the following:

- preserving the peace
- preventing crimes from occurring
- assisting victims of crime
- apprehending criminals
- laying charges and participating in prosecutions
- executing warrants
- enforcing municipal bylaws

### Fast Fact

In 2007, municipal police services employed 66 percent of all police officers in Canada and provided policing services to over 25 million Canadians or 79 percent of the Canadian population.



### Legal Link

Visit our Web site for a link to the Dakota Ojibway Police Service. Check the window that lists qualifications for people who want to join this police service.

## Aboriginal Police

The First Nations Policing Policy is administered by the Department of the Solicitor General and provides for a partnership among the federal government, provincial/territorial governments, and Aboriginal peoples to develop police services for Aboriginal communities. Each First Nation can enter into an agreement with the federal and provincial governments to establish stand-alone Aboriginal police forces or to develop First Nations contingents within existing forces. The goal of such police forces is to offer services that are professional and in touch with the culture and needs of the community.

The Dakota Ojibway Police Service was one of the first stand-alone Aboriginal police services in Canada. It was established in 1977 in southwestern Manitoba and has 21 officers serving Aboriginal communities. In New Brunswick, the first RCMP detachment consisting of Aboriginal officers serving an Aboriginal community was established in 2000 for the Maliseet First Nation in Tobique.

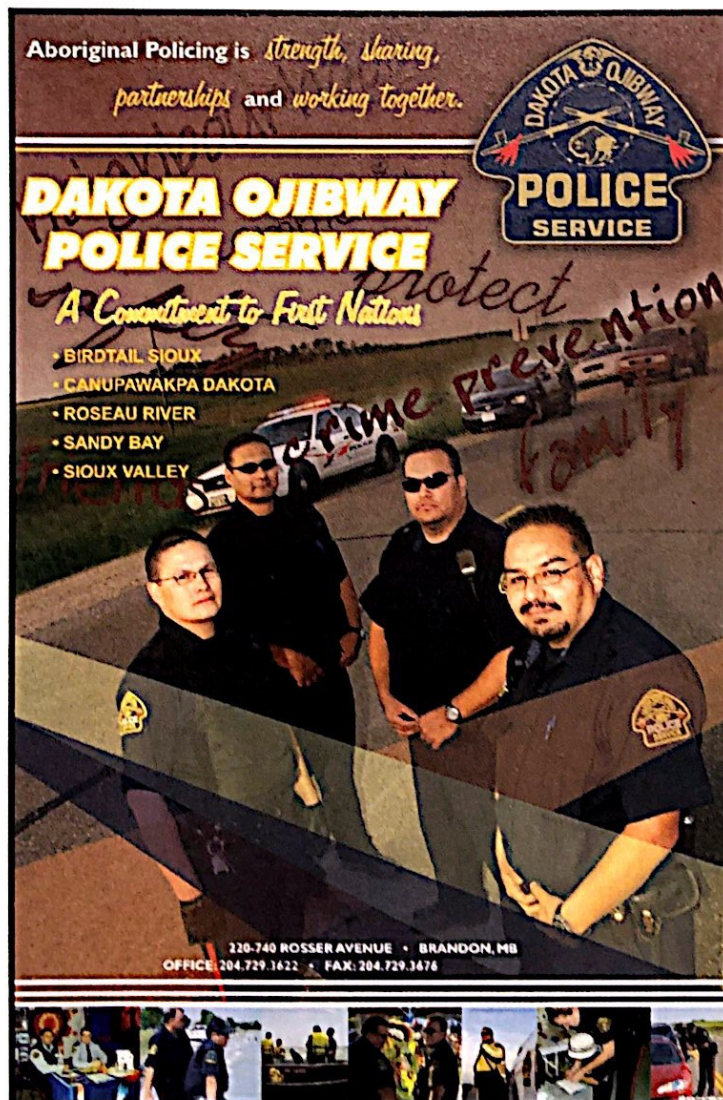


Figure 7.3



Cecil Decorte was stopped by two First Nations Constables, both members of the Anishinabek Police Service, just outside the Fort William Reserve in Ontario. They had mounted a "Reduce Impaired Driving Everywhere" (R.I.D.E.) operation at an intersection through which motorists pass on their way to and from the reserve. Under the Ontario *Highway Traffic Act*, police officers are allowed to randomly stop drivers to determine if they have been drinking and driving. The accused was charged with refusal to comply with the Breathalyzer demand. Decorte argued that First Nations Constables could not set up R.I.D.E. operations just outside the reserve, and therefore he should not have been arbitrarily detained. At trial, Decorte was convicted. The Court of Appeal upheld the conviction. Decorte then appealed to the Supreme Court of Canada on the basis that his right under s. 9 of the *Charter of Rights and Freedoms* had been infringed.

The Supreme Court of Canada dismissed Decorte's appeal. Section 48 of the *Highway Traffic Act* of Ontario empowers police officers in Ontario to conduct R.I.D.E. operations. All members of the Anishinabek Police Service are "peace officers" within the meaning of the definition in s. 2(c) of the *Criminal Code*. Therefore, First Nations Constables are empowered to demand a breath sample and arrest the accused for failure to comply with the demand. Since the First Nations Constables had the authority to lawfully set up the R.I.D.E. operation just outside the reserve, the evidence upon which Decorte was convicted was obtained in a manner that did not violate his right "not to be arbitrarily detained or imprisoned" under s. 9 of the *Canadian Charter of Rights and Freedoms*.

1. Why did Decorte take his case to the Supreme Court of Canada?
2. Using the *Criminal Code of Canada*, list three other people who are included in the definition of peace officer under s. 2.
3. Explain why the Court rejected Decorte's appeal.

### ***Building Your Understanding***

1. Using a three-column chart, identify each level of the police force and describe their jurisdictions and responsibilities.
2. Conrad murdered Leo. Which police force would investigate this crime in the city of Vancouver? in a remote region of British Columbia? in a remote area of northern Ontario?
3. Locate the Web site of your municipal or provincial police force. Research the qualifications necessary to become a police officer, and report on your findings.
4. Discuss reasons for having Aboriginal police forces service Aboriginal communities.



# STARTING A POLICE INVESTIGATION

What happens when the police first arrive at the scene of a crime? What roles do different officers play? What preliminary steps do they have to take to carry out their investigation? These questions will be answered in the following sections.

## Arriving at the Crime Scene

**crime scene:** the site where the offence took place

The location or site where an offence takes place is referred to as the **crime scene**. When officers arrive, they have three tasks to perform. Their first task is to call an ambulance and assist injured people at the scene. They must also call in reinforcements to help eliminate any hazards that still pose a risk, such as fires or unexploded bombs. Finally, officers must continue to search the crime scene even if witnesses say the suspects have left. To protect people at the crime scene, the officers must assume that the suspects are present and armed; once police have thoroughly searched the scene, they can assume it is safe.

## Protecting and Preserving the Crime Scene

**centre:** the area in which the offence was actually committed

The Crown's success in prosecuting offenders often depends on the condition of the physical evidence taken from the scene of the crime. To protect the crime scene, the officers must accurately establish two boundaries: the centre and the perimeter. The **centre** of the crime scene is the area in which the offence was



**Figure 7.4** This officer is making a pair of footprints more visible so they can be photographed.



actually committed. The **perimeter** consists of the surrounding areas where the alleged offender may have been present or may have left evidence. These areas include any entry or escape routes used by the suspect.

Crime scenes are preserved for three reasons: to allow for a thorough search of the scene, to seize and collect physical evidence, and to ensure that the physical evidence seized is admissible in court. If evidence obtained at the crime scene is not managed properly, it can become contaminated. **Contamination** is the loss, destruction, or alteration of physical evidence. Contaminated evidence may not be admissible in court, and it may lead the police to draw inaccurate conclusions.

One way to protect and preserve evidence is to document the scene carefully and accurately. Investigators keep a **police log**, which is a written record of what each officer has witnessed at a crime scene or has learned from questioning witnesses or suspects. Officers use their logs to document their daily activities. Later, these logs will help officers recall events, particularly when they testify at a trial. Investigators also use photographs, sketches, and other recording techniques to document the evidence found at a crime scene.

**perimeter:** the areas surrounding the centre, where the offender may have been present or may have left evidence

**contamination:** the loss, destruction, or alteration of physical evidence

**police log:** a written record of what an officer has witnessed

## Officers' Roles at a Crime Scene

Four types of police officers investigate a crime scene, and each officer has a separate and well-defined role to play. For example, a "patrol officer" has a "beat" or an area that he or she checks regularly. The patrol officer is often the first member of the police department to arrive at a crime scene. The officer's primary duty is to secure the crime scene and ensure that no evidence is lost or tampered with. The officer will usually wrap yellow police tape around the perimeter of the crime scene and conduct the initial interviews with witnesses to the crime. Patrol officers may also arrest suspects if they come upon a crime in progress.

A "scenes of crime officer" is trained in evidence collection and preservation techniques. These officers are usually skilled photographers, trained in lifting fingerprints and foot and tire impressions. They also collect blood and hair evidence. Scenes of crime officers tend to work on less serious offences such as break and enters and car thefts.

A "criminal identification officer" is responsible for searching the crime scene, examining the scene for physical evidence, gathering and analyzing evidence, and sending certain types of evidence to a laboratory for analysis. For instance, if a murder victim has struggled with the murderer, a criminal identification officer may collect bits of the murderer's skin from under the fingernails of the victim and send them to a lab to be analyzed.

A "criminal investigations bureau officer" is a plainclothes detective with experience in a particular area of crime, such as homicide, robbery, or sexual offences. These officers are trained to supervise the investigation, interview victims and witnesses, interrogate suspects, draw conclusions from the physical evidence, and arrest suspects.





**Figure 7.5** Criminal identification officers, experts in collecting evidence from a crime scene, are primarily involved in serious crimes such as homicides and robberies. Would this type of career interest you? Why or why not?

### ***Building Your Understanding***

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1. What three tasks must the police complete when they first arrive at a crime scene?
  2. What two boundaries must the police establish at a crime scene? How do these boundaries help their investigation?
  3. Provide an example of a piece of contaminated evidence and explain why it would hurt the Crown's case against an accused.
  4. Briefly explain why the police keep a log of their activities at a crime scene.
  5. Compare the roles played by a patrol officer and a criminal identification officer.
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## IDENTIFYING AND COLLECTING PHYSICAL EVIDENCE

In many criminal trials, the Crown must be able to prove beyond a reasonable doubt that the accused was present at the crime scene when the offence was committed. For this reason, the collection, preservation, and analysis of physical evidence is a crucial aspect of police work. **Physical evidence** may be defined as any object, impression, or body element that can be used to prove or disprove facts relating to an offence. This type of evidence is valuable because it can carry greater weight in court than evidence obtained through witnesses' statements.

**Forensic science** is the application of biochemical and other scientific techniques to criminal investigation. You've probably seen some of these techniques applied on the television show CSI. Forensic scientists examine and analyze the physical evidence found at a crime scene. They do most of their work in laboratories, but they also spend considerable time giving expert testimony at trials and inquests. Perhaps the best-known type of forensic scientist is the pathologist who performs an autopsy to determine how and when a person died. Some scientists specialize in firearms and are able to analyze bullet fragments to identify the type of gun used in a crime. Forensic chemists can also determine the type of vehicle driven by the offender by examining a paint chip left at a crime scene, and entomologists (insect specialists) can determine a victim's time of death by identifying the life stages of insects found on the body.

**physical evidence:** any object, impression, or body element that can be used to prove or disprove facts relating to an offence

**forensic science:** the use of biochemical and other scientific techniques to analyze evidence in a criminal investigation

### Legal Link

To find out what it's like to investigate a murder as a forensic scientist, try the computer simulation at our Web site. Write a persuasive paragraph to convince other students to try the simulation.

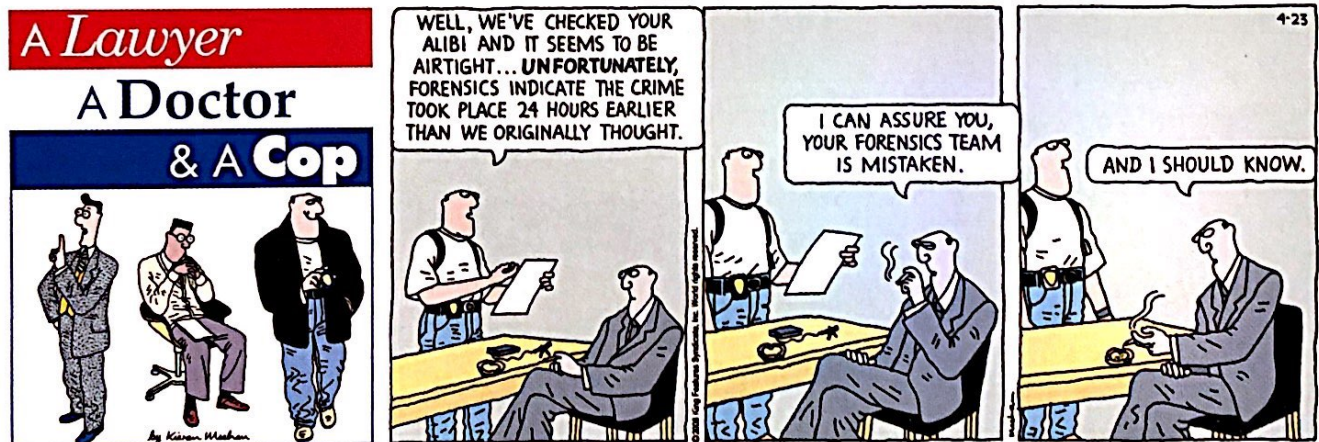


Figure 7.6

### Tools

Tools often used in the commission of crimes are hammers, knives, screwdrivers, and crowbars. These tools may have individual characteristics on their surfaces or edges that can be detected in crime laboratories. These marks can be made either in the manufacturing of the tool or by normal wear and tear.



## Impressions

**impressions:** patterns or marks found on surfaces and caused by various objects

**class characteristics:** the general attributes of an object

**individual characteristics:** the specific and unique features of an object

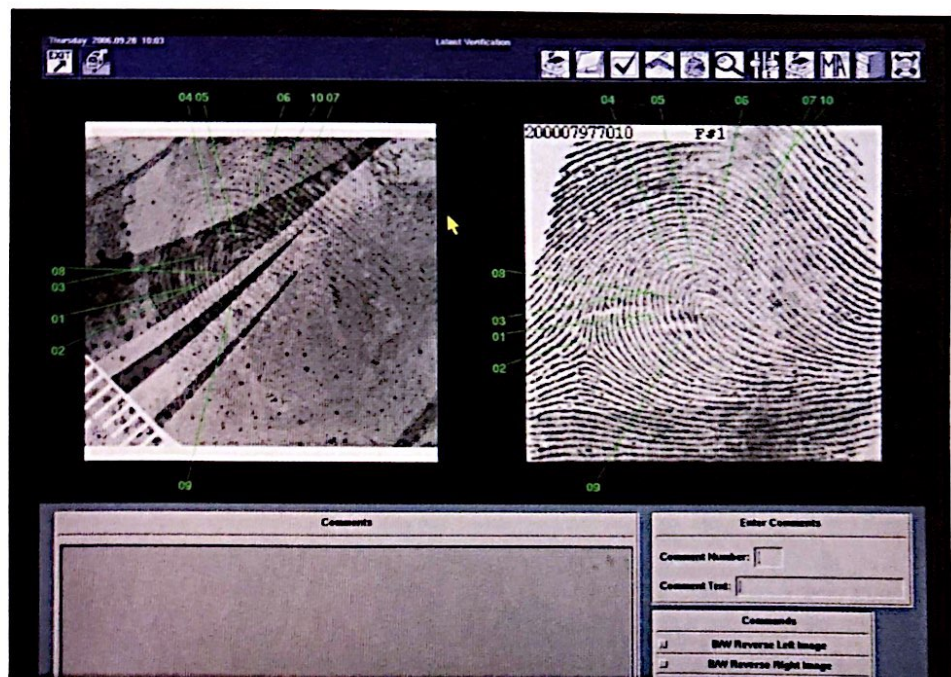
**fingerprint:** a mark left behind after a fingertip touches an object

**Impressions** are patterns or marks found on various surfaces, caused by different objects such as fingers, gloves, shoes, tires, or tools. Collecting impression evidence is done in two stages. First the impression is recorded by photographing or scanning it, or by taking a mould. Then the police try to match the impression with the object that made it, such as matching a fingerprint lifted at the scene with a print taken from a suspect at the police station.

Impressions have two characteristics: class characteristics and individual characteristics. **Class characteristics** are the general attributes of an object, such as type, make, model, style, and size. For instance, a tire's class characteristics might be described as a 12-inch, steel-belted radial, manufactured in 2005 by the B.F. Goodrich Company. Because these characteristics are shared by thousands of other tires, they lack specific details that might narrow down the range of possibilities to one particular tire on one particular car. On the other hand, **individual characteristics** refer to specific and unique features of an object. Regarding the tire, these features might include specific tread wear it showed as the left rear tire on a Ford Taurus. Such characteristics could narrow the range of possibilities considerably and help investigators make a positive identification of a hit-and-run driver.

## FINGERPRINTS

A **fingerprint** is a patterned mark left on a surface by a fingertip. Prints can also be taken of a person's hands, feet, or toes, but fingerprints are easier to work with and classify. Because fingerprint patterns never change and are unique to each individual, a fingerprint is the best type of impression to use to identify an offender. No two people have ever been found to have the same fingerprint pattern. Even identical twins have different patterns.



**Figure 7.7** Fingerprints are also used to identify people who have died or those injured beyond recognition. Compare your thumbprint with that of a classmate.



There are two types of prints. A **visible fingerprint** can be observed by the naked eye and is usually formed when the fingertip is coated in dirt, blood, grease, or some other substance. This type of print can be photographed immediately. A **latent fingerprint**, made by the perspiration and oils that occur naturally on the skin's surface, cannot be seen by the naked eye. This print has to be "developed" before it is photographed. Three methods are used to develop latent prints:

- Prints on non-absorbent surfaces, such as metal or plastic, can be dusted by using a graphite powder that sticks to the ridges of the print. The print is then lifted using adhesive tape and placed on a white cardboard surface, where it is photographed. The cardboard is initialled by the police officer who lifted the print, and the print is safely stored so it can be used later as evidence in court.
- The technique called "iodine fuming" is used to lift prints from absorbent surfaces such as paper and cloth. The area being investigated is placed under iodine fumes; any existing fingerprints absorb the iodine and become visible.
- A laser beam can be used to illuminate the print. Sweat compounds deposited on the surface absorb the laser, and the print turns yellow and can be photographed.

### GLOVES

Criminals who use gloves to conceal their fingerprints may be in for an unpleasant surprise. Police can use glove impressions to identify a suspect in almost the same way they use fingerprints. To make a positive identification, they compare the impression's class characteristics (such as the overall pattern of the glove and the spacing of its stitches) and the individual characteristics (such as worn or torn areas) with the gloves of a suspect.

**visible fingerprint:** the print formed when a fingertip is coated in blood, grease, or some other substance; it is visible to the naked eye

**latent fingerprint:** the print formed by natural oils and perspiration on the fingertip; it is invisible to the naked eye

### off the mark

by Mark Parisi

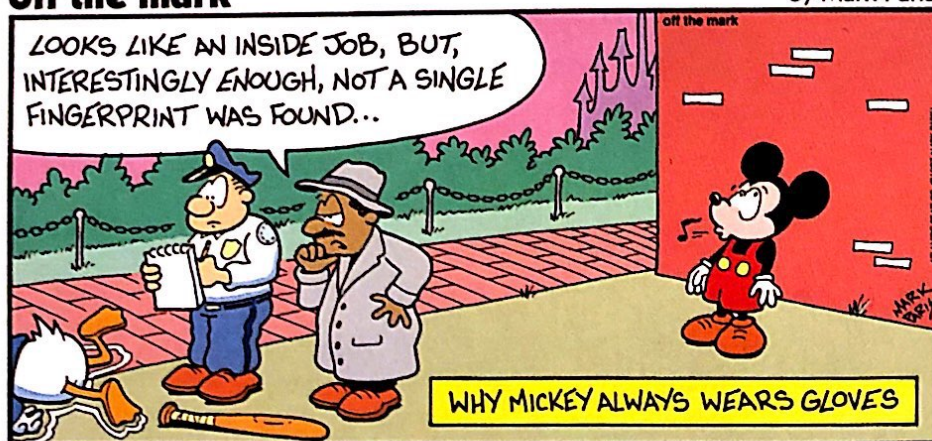


Figure 7.8

### Fast Fact

Fingerprint patterns never change and are usually the last surface to decompose after death.



### Law in **Your Life**

Take a look at the bottom of your shoes. Do you notice any distinctive patterns? Most shoe manufacturers have their own patterns, which are some of the class characteristics that help police identify shoes that leave impressions at a crime scene.

## SHOE PRINTS AND TIRE TRACKS

Shoe prints and tire tracks can be matched to the suspect's shoes or tires to help place the suspect at the scene of the crime. If the police can find four shoe prints—two of the left foot and two of the right—they can learn an amazing amount about a suspect. These prints can give them a general idea (but not conclusive proof) of the suspect's approximate height and weight; any injuries he or she might have sustained in committing the crime; whether the suspect was carrying, pushing, or dragging anything; and whether he or she was walking or running. Tire impressions can help investigators determine the type of tires, the make of car, and the direction in which the car was travelling as it entered or left the crime scene.

## Body Elements and DNA

Crimes against people often result in the transfer of bodily fluids or other bodily elements from the suspect to the victim. Such elements include blood, semen, mucus, sputum, hair, and skin. The police can use any of these substances for DNA testing and other laboratory tests in order to match the elements with a particular suspect.

Blood is the most common body substance found at a crime scene. Investigators send blood samples for laboratory analysis to determine whether the sample is, in fact, human blood. If it is human blood, then the sample is further analyzed to see whether it matches the blood type of the victim or suspect. Because blood types are like class characteristics, they cannot be used for purposes of positive identification without DNA testing. Hair and clothing fibres can be easily transferred from an offender to a victim during the commission of a crime. The police can use these fibres to match those found in a suspect's clothes, car, or home. Investigators can then take representative fibres from the suspect's belongings and submit them to a forensic laboratory for comparison.

### Legal Link

Not all crimes are solved. To find out about unsolved crimes and rewards for information leading to arrest and conviction, visit our Web site. How does a person qualify to receive a reward for information?

### Fast Fact

One important advantage to DNA testing is that DNA molecules are stable. If properly preserved, they can be used in an investigation decades after the crime occurred.

**Figure 7.9** This forensic investigator is examining evidence samples for clues that may help solve a case. What types of evidence do you think would be most helpful?





Dennis Rodgers was sentenced to four years in prison for a sexual assault he committed while he was on probation on a conviction for sexual interference. He was not required to provide a DNA sample when sentenced because he was convicted prior to the proclamation of the 1998 *DNA Identification Act* and there was no ongoing investigation of a crime involving him. Before his sentence expired, the Crown applied an *ex parte* (without notice to him) order under s. 487.055 (1) of the *Criminal Code* for authorization to take a DNA sample from Rodgers for inclusion in the national DNA data bank. He argued that the order should not have been granted without notice to him and that s. 487.055 (1) infringed his rights under ss. 7, 8, and 11(h) and (i) of the *Canadian Charter of Rights and Freedoms*.

In a four-to-three decision, the Supreme Court of Canada decided that Rodgers' application should be dismissed. The majority of Justices stated that the *Criminal Code* clearly permits judges to make *ex parte* orders for DNA samples from convicted persons. As well, s. 487.055 of the *Code* does not infringe his *Charter* rights. While the taking of bodily samples for DNA analysis without consent constitutes a seizure within s. 8 of the *Charter*, the collection of DNA samples for the national data bank from designated classes of convicted criminals is reasonable. These samples are used only to create profiles in the national DNA data bank and are used in a manner similar to fingerprinting and other identification measures.

1. What do you think is the purpose of a DNA bank?
2. Why wasn't Rodgers required to provide a DNA sample when he was sentenced?
3. Acting as counsel for Rodgers, outline how you would try to convince the Court that your *Charter* rights under ss. 7, 8, and 11(h) and (i) had been violated.

## DNA TESTING

What is DNA? DNA (deoxyribonucleic acid) is the building block of a person's genetic makeup. It is found in every cell in the human body and determines a person's physical characteristics, such as height, weight, and hair colour. The DNA of every cell in a person's body is identical. However, the *pattern* of the DNA is different for each person, with the exception of identical twins.

A forensic scientist can extract a person's DNA from as small a sample as a few drops of blood or a couple of hairs. This sample is then analyzed, creating a DNA profile that can be used in much the same way that fingerprints are used to identify a person. A suspect's DNA "print" can be compared with the DNA profile of a sample from the crime scene. If the profiles match, investigators will conclude that the two samples came from the same person. If the profiles do not match, then the samples must have come from different people, and the investigators will have to find another suspect. Therefore, DNA analysis can be used either to link suspects to a crime with physical evidence or free them from suspicion.

## off the mark

by Mark Parisi

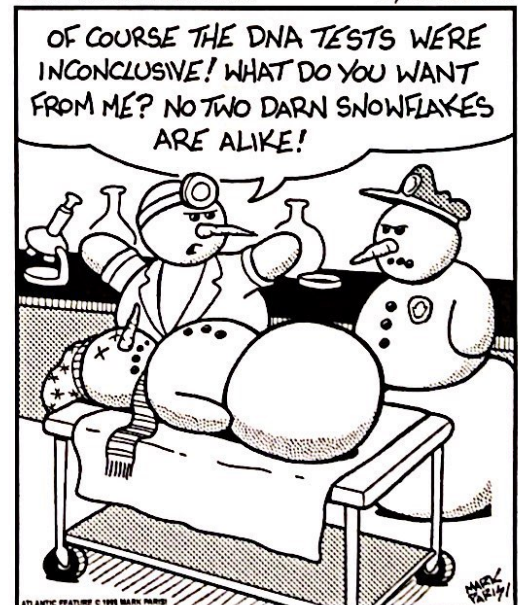


Figure 7.10



**chain of custody:** the witnessed, written record of the people who maintained unbroken control over an item of evidence

## Procedures for Labelling Evidence

One primary task of scenes of crime officers is to label items of evidence so they can easily be identified at a later date. Proper labelling also ensures that the evidence has not been contaminated or tampered with in any way. For these reasons, the officers take care to establish a proper chain of custody for the evidence. A **chain of custody** is the witnessed, written record of all of the people who had control over the items of evidence. This chain must remain unbroken from the time the evidence is discovered at the crime scene to the time it is produced in court. It must show

- who had contact with the evidence;
- the dates and times the evidence was handled;
- the circumstances under which the evidence was handled; and
- what changes, if any, were made to the evidence.

All evidence collected at the scene of the crime is tagged and placed in an "evidence package." The following information usually appears on both the tag and the exterior of the package:

- brief description of the item
- police case number
- date when the evidence was collected
- location of collection
- brand name of the item, if any
- serial number or clothing information
- name and badge number of the officer who collected the evidence
- destination of the item for analysis or storage

### Consider This

An error in labelling does not necessarily exclude the evidence. If the defendant's rights have not been violated, the Judge can include the evidence on the basis that a "reasonable person" would not be shocked by any misconduct in evidence handling. Discuss whether judges should have this discretion.

**Figure 7.11** A Mohawk police officer stands with police from other detachments over marijuana, weapons, and cash seized in raids in March 2008.





## Two of the five feet found in B.C. from same person

Chad Skelton and David Hogben

**VANCOUVER**—Two of the five feet that have mysteriously washed ashore in southwest B.C. over the past year are from the same man, DNA testing has revealed....

RCMP spokeswoman Const. Annie Linteau said police have been going through lists of hundreds of missing people trying to find a match.

Based on several factors, said Ms. Linteau, police identified 243 missing males who could be linked to the feet.

So far, said Linteau, police have been able to eliminate 132 people from that list....

Ms. Linteau stressed that police have no reason to believe the feet were severed...there are no tool marks on the feet.

"It appears that these feet have...disarticulated from the body through a natural process," said Linteau.

She also said that, aside from the two matching feet, police have no evidence that the feet are connected.

However, Ms. Linteau said police have not ruled out the possibility that some of the feet

may belong to murder victims.

Four of the feet that washed ashore were found in sneakers that are widely available in North America.

Police released further details Thursday on the five feet in the hopes the public can help to identify them:

- The first foot was found on Aug. 20, 2007, on Jedediah Island...Campus brand shoe, size 12...available for sale primarily in India.
- The second foot was found on Aug. 26, 2007, on Gabriola Island...Reebok, size 12...first produced in 2004 and no longer for sale.
- The third foot was found on Feb. 2, 2008, on Valdez Island...blue and white Nike, size 11...produced between February and June 2003.
- The fourth foot was located on May 22, 2008, on Kirkland Island...size 7 New Balance and the only female foot...produced beginning in June 1999.
- The fifth foot, the only left foot, was found on June 16,

2008, on Westham Island. ...testing has matched it with the third foot found on Valdez.

Both police and the coroner say they have been overwhelmed with media calls from around the world about the feet.

On one wall of the briefing room, a map...indicated where the five feet were found—displaying photographs of the five sneakers....

Dean Hilderbrand, a forensic scientist working on these cases, said none of the DNA information can reveal the race or age of the victims.

He said investigators are unable to tell how long the feet had been in the water. He added that water tends to accelerate the decomposition of human tissue, which has impeded the investigation.

SOURCE: Chad Skelton and David Hogben, "Two of the five feet found in B.C. from same person," *National Post*, July 10, 2008.

1. Do you think contacting the shoes' manufacturers might help to identify the human remains? Explain.
2. How did investigators match the fifth shoe with the third?
3. What do you think is causing feet to wash up on the shoreline?



## Building Your Understanding

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1. Which type of evidence carries more weight in a court of law: physical evidence or a witness's testimony? Explain why.
  2. Using examples, distinguish between the class and individual characteristics of impressions.
  3. Explain how latent fingerprints can be lifted from a crime scene and entered as evidence.
  4. What is the most common body substance found at a crime scene?
  5. Briefly explain how the use of DNA profiling helps the police solve crimes.
  6. Why is the chain of custody for physical evidence so important to a police investigation?
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## ARREST AND DETENTION

Once the police have collected physical evidence, they usually begin to question the suspects. Depending on the amount of evidence collected, the police may make an arrest either before or after questioning. Procedures for dealing with suspects have been codified in the *Criminal Code*, developed through case law, and enshrined in the *Charter of Rights and Freedoms*. If the police do not conduct their investigation according to established procedures, they run the risk of watching the case fall apart later in court because evidence obtained improperly may be considered inadmissible.

### Questioning the Accused

Police officers are required to ask suspects questions as they investigate a crime. They cannot, however, *force* a suspect to answer their questions. Section 7 of the *Charter* has been interpreted to grant a detained or arrested person the right to remain silent. According to *R. v. Liew*, [1999] 3 S.C.R. 227, the police must give the suspect a chance to "make a free and meaningful choice about whether to speak or remain silent." The police are required by law to promptly inform arrested persons of the reason for their arrest and of their right to counsel. The procedure is standard; the arresting officer must say the following:

You have the right to retain and instruct legal counsel without delay. You have the right to telephone any lawyer that you wish. You also have the right to free legal advice from a legal aid lawyer. If you are charged with an offence, you can contact the Legal Aid Plan for legal assistance. Do you understand? Do you wish to telephone a lawyer now?

Once an arrested person has been informed of his or her rights, anything he or she says to the police or puts in writing can be used against that person in court.

Young people are given special rights and protection under the *Youth Criminal Justice Act*, which will be examined in detail in Chapter 12, Criminal Law and Young People.



## INTERROGATION TECHNIQUES

When police officers interview a suspect, their primary goal is to obtain the truth. The best way to accomplish this goal is to develop a trusting relationship with the suspect. At the beginning of the questioning process, the police tend to use open-ended, non-threatening questions, such as, "Tell me what happened." These questions are designed to encourage the suspect to talk about the incident and provide answers with lots of information. Later, investigators ask closed questions such as, "What time did you leave your house?" These questions are designed to elicit specific answers.

Most of the time, police use a four-stage approach in the interrogation process. They ask the suspect to describe

- 1) the entire incident
- 2) the period before the offence took place
- 3) the details of the actual offence
- 4) the period following the offence

## Arrest and Detention Procedures

A criminal case usually begins when the police formally charge a person with committing an offence. The police may either arrest or detain the suspect. A person placed under **arrest** is deprived of his or her liberty by legal authority. In order for an arrest to be lawful, the arresting officer must follow four steps:

- 1) identify himself or herself as a police officer
- 2) advise the accused that he or she is under arrest
- 3) inform the accused promptly of the charge and show the arrest warrant if one has been obtained
- 4) touch the accused to indicate that he or she is in legal custody. Once the accused is in custody, the police must inform the person of the right to counsel.

In certain circumstances, instead of arresting the suspect, the police will "detain" the person. **Detention** involves stopping someone and asking the individual to answer a few questions. When the police place someone under detention, they are depriving that person of liberty, with or without physical restraint. People detained by police must be promptly informed of the reasons for the detention and of their right to retain counsel. The following example illustrates the distinction between arrest and detention.

Suppose the police are called to the scene of a serious assault. The victim is conscious and able to give the police a description of the person who assaulted him. The police comb the neighbourhood and find Francis, who fits the description in every respect. They stop Francis and ask him to accompany them to division headquarters to answer a few questions. He asks if he has

### Consider This

While being interrogated in September 2000, Stuart McKellar Cameron told police seven times that he didn't want to talk. Nonetheless, officers continued their interrogation until Cameron finally confessed to the murder of one sister and the attempted murder of the other. Should Cameron's confession be admissible as evidence in this circumstance? Explain.

**arrest:** legally depriving someone of liberty by seizing or touching the person to indicate that he or she is in custody

### Fast Fact

Interrogation techniques must be persuasive enough to convince a guilty person to admit guilt, but not so powerful that they cause an innocent person to confess.

**detention:** legally depriving a person of liberty for the purpose of asking questions, with or without physical restraint



a choice in the matter, and the police say no—he fits the description they were given by an assault victim. He is obliged to go with them but may call a lawyer when they get to the station. At this point, Francis has been detained by the police. If he refuses to accompany them, the police may place Francis under arrest and take him to the station against his will.

**reasonable grounds:**

information that would lead a reasonable person to conclude that the suspect had committed a criminal offence

The police cannot arrest just anyone they suspect of committing a criminal offence. They must have some proof that an offence has been committed, and they must have reasonable grounds for suspecting that the person they wish to arrest was the offender. **Reasonable grounds** means that based on the information available, a reasonable person would conclude that the suspect had committed a criminal offence. For example, if the police find Wendy sitting in a car with bags of money in the vicinity of a bank that has just been robbed, they would have reasonable grounds to arrest her.

Responsible citizens usually cooperate with the police when stopped or questioned. If the questioning persists beyond an appropriate point, the individual may demand to speak to a lawyer and be given the officer's name and badge number. If someone is detained or arrested in an arbitrary or improper manner, that person may sue the police for unlawful arrest.

### APPEARANCE NOTICE

The police have three methods of apprehending an offender. They can issue an appearance notice, arrest the suspect with a warrant, or arrest the suspect without a warrant.



**Figure 7.12** How would the four-stage approach of interrogation help the police learn the truth of what actually occurred?



For most summary offences and for those indictable offences that are less serious, the police will not arrest the accused person but will issue an **appearance notice**, a legal document compelling the accused to appear in court on a certain date at a specific time. The accused must sign the appearance notice and be given a copy. If the accused fails to attend court on the date shown, the police may ask a Judge to issue a **bench warrant**. Then the accused will be arrested for the original offence and also charged with another offence called "failure to appear." In this case, the accused may find it more difficult to be released from custody before the court date.

### ARREST WITH A WARRANT

When a person is suspected of committing a serious indictable offence, the police may ask a Judge or Justice of the Peace to issue a **summons**. This usually happens when the police have reason to believe that the suspect will appear in court voluntarily. Delivered by a sheriff or deputy, the summons informs the accused of the charges and when to appear in court. Usually, the accused is directed to go to the police station for fingerprinting. Failure to do so may lead to the issuing of a bench warrant.

If the police have reasonable grounds to think that someone accused of a serious indictable offence will *not* appear in court willingly, they can obtain an arrest warrant, which involves providing a sworn "information" before a Judge or a Justice of the Peace. An **information** is a statement given under oath, telling the Court the details of an offence. Once the police "lay an information," the Judge or Justice of the Peace decides whether it is in the public interest to issue a warrant for the person's arrest. An **arrest warrant** is a written court order directing the police to arrest the suspect. The warrant provides the name of the accused, the offence the person is charged with, and the reason for the warrant.

### ARREST WITHOUT A WARRANT

Section 495 of the *Criminal Code* lists three circumstances under which the police may arrest suspects without a warrant:

- They have reasonable grounds to suspect a person has either committed an indictable offence or is about to commit one.
- They find a person in the act of committing a criminal offence.
- They find a person whom they believe is named on an arrest warrant.

Note that the provisions in s. 495 are extended not just to the police, but to all peace officers. The status of **peace officer** is granted to many officials, including mayors, prison guards, customs officers, aircraft pilots, and fisheries officers.

### CITIZEN'S ARREST

The most common form of citizen's arrest involves incidents of shoplifting. Instead of being arrested by a peace officer, the suspect is arrested by a store

**appearance notice:** a legal document, usually issued for less serious offences, compelling an accused person to appear in court

**bench warrant:** an arrest warrant issued directly by the Judge when an accused person fails to appear in court

**summons:** a legal document issued for an indictable offence, ordering an accused person to appear in court

**information:** a statement given under oath, informing the Court of the details of the offence

**arrest warrant:** a written court order, directing the arrest of the suspect

### Fast Fact

The *Criminal Code* grants police the authority to search any place except a residence for illegal firearms without first obtaining a warrant.

**peace officer:** a person responsible for preserving the public peace, such as a police officer, a mayor, or a customs officer



### Consider This

The *Criminal Code* gives the police the authority to arrest a person without a warrant if they suspect, on reasonable grounds, that he or she is planning a terrorist activity. Does this law violate the right of Canadians not to be arbitrarily detained or arrested? Explain.



**Figure 7.13** These suspects have been arrested at their home without a warrant. Under what circumstances may such an arrest take place?

**citizen's arrest:** an arrest without a warrant by any person other than a peace officer

detective or a salesperson. Immediately after a **citizen's arrest** is made, however, the suspect must be turned over to a peace officer. Generally, citizen's arrests are rare—many people are afraid they may be sued for false arrest or injured in a fight with a desperate or violent suspect. Section 494 of the *Criminal Code* outlines the circumstances in which a citizen's arrest can be made:

- (1) Anyone may arrest without a warrant
  - (a) a person whom he finds committing an indictable offence; or
  - (b) a person who, on reasonable grounds, he believes
    - (i) has committed a criminal offence; and
    - (ii) is escaping from and freshly pursued by persons who have lawful authority to arrest that person.
- (2) If an individual is committing a criminal offence on or in relation to property, that person may be arrested without a warrant by
  - (a) the owner or a person in lawful possession of the property; or
  - (b) a person authorized by the owner or by a person in lawful possession of the property.

### Fast Fact

Passengers and crew who come to the aid of the pilot to help subdue a violent passenger are protected by s. 25 of the *Criminal Code*, which states that they are "in aid of a peace officer."

## Searches

Because the law seeks to balance the individual's right to privacy with the state's need to conduct a thorough investigation, both statute and common law carefully explain at what point the police may conduct searches during a criminal investigation and what kind of evidence they may collect. As you learned in Chapter 4, s. 8 of the *Charter* protects people in Canada from



unreasonable search and seizure. Generally, the police have to obtain a warrant before conducting a search, but as the following sections show, there are important exceptions to this rule.

### SEARCHING A PERSON

The police do *not* have to obtain a warrant to search a person they have just arrested. According to the Supreme Court decision in *R. v. Stillman*, [1997] 1 S.C.R. 607, the police have to satisfy three conditions for this exception to be legal:

- The arrest must be lawful.
- The search must be connected to the lawful arrest.
- The manner in which the search is carried out must be reasonable.

### *R. v Mann*, [2004] 3 S.C.R. 59

### Case

Two police officers, investigating a break and enter, noticed Philip Mann, who matched the description of the suspect, walking on the sidewalk. The officers identified themselves, detained Mann, and he complied with a “pat-down” search as they looked for concealed weapons on him. They found no weapons, but one of the officers felt a soft object in his pocket. The officer then reached into Mann’s pockets and found in one pocket a plastic bag containing marijuana and in another pocket a number of small plastic bags. He was then arrested and charged with possession of marijuana for the purpose of trafficking. The trial Judge found that the search of Mann’s pockets violated s. 8 of the *Canadian Charter of Rights and Freedoms*, which states that “Everyone has the right to be secure against unreasonable search or seizure.” The Judge also stated that the police officer was justified in conducting the “pat-down search” for security reasons, but that it was unreasonable to look into his pockets. The evidence was excluded under s. 24 (2) of the *Charter* as it would interfere with the fairness of the trial.

The trial Judge acquitted Mann. The Court of Appeal set aside the acquittal and ordered a new trial, ruling that the detention and the “pat-down” search were authorized by law and were reasonable under the circumstances. Mann appealed to the Supreme Court of Canada.

The Supreme Court allowed the appeal and said that the police were justified in detaining Mann for investigative purposes and conducting a “pat-down” search to ensure their safety. But the officer had no reasonable basis for searching Mann’s pockets, and this more intrusive part of the search was a violation of Mann’s reasonable expectation of privacy in respect of the contents of his pockets. When the officer reached into Mann’s pockets, the purpose of the search shifted from safety to the detection and collection of evidence. Thus, it became a search for evidence without reasonable grounds and the evidence should have been excluded under s. 24 (2) of the *Charter*.

1. Why did the trial Judge find that the search of Mann’s pockets by the police contravened s. 8 of the *Charter*?
2. When are the police entitled to conduct a “pat-down” search?
3. Explain the reason the Supreme Court excluded the evidence under s. 24 (2) of the *Charter*.
4. Do you agree or disagree with the police’s being able to search one’s pockets when conducting a “pat-down” search? Explain.



### Law in Your Life

Police officers who do not have a warrant can search a residence with the homeowner's permission. Discuss whether police officers should have the right to search your room without your permission, even if they have your parents' permission to search the residence.

**search warrant:** a court document that gives the police the right to search a specific location

Except in the case of someone suspected of impaired driving, an arrested person does not have to supply the police with a breath, blood, or urine sample, unless compelled to do so by a warrant. Even with a warrant, the arrested person is usually allowed to confer with a lawyer before providing the sample. For certain "designated offences," such as murder or aggravated sexual assault, the police may obtain a warrant that forces a person to provide a sample for DNA profiling.

In most cases, to ensure that the arrested person is not carrying weapons or concealing evidence, the police will do a cursory search or "pat-down" immediately after the arrest. A more thorough search may take place at the police station. The practice of strip searching suspects, even those arrested for non-violent crimes, has been relatively common in Canada.

### SEARCHING A PLACE

In most cases, the police must obtain a warrant before searching places such as a residence, an office, or a storage area. In *R. v. Buhay*, [2003] on page 207, the Supreme Court of Canada said that the search of a bus locker without a warrant was a violation of s. 8 of the *Charter*. A **search warrant** is a court document that gives police the right to search a specific location. When preparing a search warrant, the police must ensure that the warrant is correctly obtained and properly filled out. Any irregularities may result in the Court's throwing out evidence obtained through the warrant.

To obtain a search warrant, a police officer must deliver a sworn information to a Judge or Justice of the Peace. The information will specify the crime, the items the police are looking for, and the reasonable grounds they have for believing that those items will be found in a specific location. If the Court grants the warrant, this document will list all these details as well as the date and time the police are allowed to conduct their search. For searching a residence, the warrant usually specifies one day during which the search may be carried out. Unless otherwise noted, the search must take place during daylight hours, that is, between 6:00 a.m. and 9:00 p.m.

Before conducting their search, the police must identify themselves and show the warrant to the person living or working in the place to be searched. During the course of the search, the police may confiscate other items that are not listed in the search warrant, as long as these items are related to the crime and are in plain view. Any objects to be used as evidence in court will be kept in police custody until the trial. Other items must be returned to the owner within three months.

### off the mark

by Mark Parisi



Figure 7.14



## R. v. Buhay, [2003] 1 S.C.R. 631

**BACKGROUND** Mr. Buhay rented a locker at a Winnipeg bus station. A security guard detected an odour coming from the locker and had it opened. The security guard found a duffel bag containing marijuana. He put the bag back into the locker and called police. The police alleged that they also smelled marijuana and seized the bag and its contents without a warrant. The next day, the accused tried to retrieve the bag from his locker. He was arrested and charged with possession of marijuana for the purpose of trafficking.

The trial Judge found that Buhay's right to be free from unreasonable search and seizure in s. 8 of the *Canadian Charter of Rights and Freedoms* had been violated. He excluded the evidence under s. 24 (2) of the *Charter* and acquitted the accused. The Manitoba Court of Appeal allowed the Crown's appeal and entered a conviction. Buhay then appealed to the Supreme Court of Canada.

**LEGAL QUESTION** Did the police violate the accused's right to privacy by entering his rented locker at the bus station without a warrant?

**DECISION** The Supreme Court of Canada dismissed Buhay's conviction and restored the acquittal. The Court stated that the accused had a reasonable expectation of privacy with respect to the locker. Buhay paid to rent the locker and had possession of the locker's key and control and possession of its contents. The bus line's policy was to enter a locker if it believed that the locker contained something dangerous. In this case, the bag's contents posed no security threat.

**LEGAL SIGNIFICANCE** The warrantless search and seizure was an impermissible intrusion of the state on a legitimate and reasonable expectation of privacy with respect to a rented locker at a bus station. Therefore, this search without a warrant constitutes a violation of s. 8 of the *Charter*.



"Either he really likes you,  
or you're under arrest."

**Figure 7.15** Do you think Canadian citizens returning to Canada should be able to invoke s. 8 of the *Charter of Rights and Freedoms* at the border? Why or why not?

### ANALYSIS QUESTIONS

1. Explain the reasons of the Supreme Court of Canada for overturning the conviction of the Manitoba Court of Appeal.
2. When would it be permissible for a police officer to search a rented locker?
3. If you were judging this case, would you agree or disagree with the police officer's search of the locker without a warrant? Explain.



**telewarrant:** a search warrant obtained by phone or fax

In cases where the police believe they must act quickly to preserve evidence, they may obtain a telewarrant to search the premises. A **telewarrant** is a search warrant obtained over the telephone or by fax. The officer gives the Judge or Justice of the Peace all the required information over the phone, and the Judge makes a record of the information and files it with the Court. The officer then makes a facsimile warrant and shows this warrant at the scene of the search.

A search warrant is almost always required if the police wish to search a private home. However, under s. 529 (3) of the *Criminal Code*, two exceptions apply where pressing circumstances make it difficult to obtain a warrant in time. Police must have reasonable grounds to believe that entering the dwelling is necessary to prevent 1) imminent injury or death to any person or 2) the destruction of evidence relating to an indictable offence.

The *Controlled Drugs and Substances Act* gives the police the authority to search any premises *except* a person's residence for illegal drugs without first obtaining a warrant. Anyone found within the premises can also be searched if the police have reason to believe they are carrying illegal drugs. Also, provincial liquor laws give police the right to search motor vehicles for illegal alcohol without first obtaining a warrant. A warrant is still necessary, however, to search a residence for illegal alcohol.

**lineup:** a grouping of photographs or people shown to a victim or a witness for the purpose of identifying the perpetrator

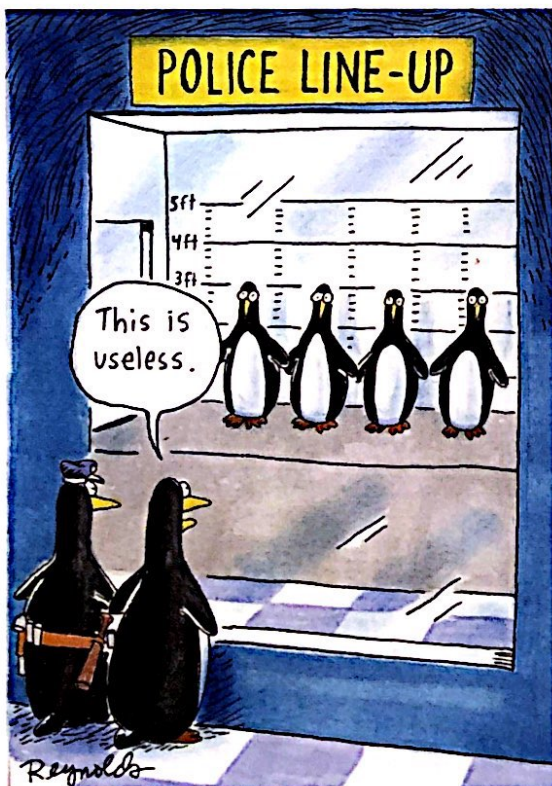
## Procedures After Arrest

Once a person has been arrested, a number of procedures may follow, such as taking photographs and fingerprints, or asking the victim or witness to identify the suspect after viewing a number of people with similar characteristics.

The only suspect the police have the right to photograph and fingerprint is someone who has been arrested for an indictable offence. If the police do not charge the person, or if the person is charged but acquitted in court, the police will usually retain the arrest record (including the fingerprints and photographs) for ten years before destroying it.

A **lineup** is a grouping of photographs shown to a victim or a witness for the purpose of identifying the perpetrator. Usually the people in a photo lineup are all of the same gender and share the same general characteristics of age, race, hair length, and so on. Although in-person lineups are seldom used today, it is an option only if the suspect agrees to participate. The police cannot force a person to stand in a lineup, but in some cases, cooperating with the police may work in the suspect's favour.

Figure 7.16





## Building Your Understanding

1. When questioning suspects, can the police force them to answer? Explain.
2. In your own words, describe the steps a police officer must take in making a legal arrest.
3. Identify the similarities and differences between arrest and detention.
4. Can a police officer arrest a suspect on the mere suspicion that he or she has committed a crime? Explain.
5. Give two reasons why citizen's arrests are seldom made.
6. What three conditions must be satisfied for the police to search someone without a warrant?
7. Under what circumstances can the police compel a person to supply a breath, blood, or urine sample?
8. For what type of offences must a person *not* be fingerprinted and photographed?

## PRETRIAL RELEASE

Once a person has been arrested, fingerprinted, and photographed, the police may release the accused until the trial. Depending on the accused's record, mental health, and other issues, release may be considered for people accused of summary or indictable offences that carry a fine of \$5000 or less. If the police believe the accused will appear in court voluntarily and will not commit any offences while awaiting trial, the accused will sign a **promise to appear**. If the accused does *not* appear on the assigned date, the Court may issue a bench warrant for his or her arrest.

In some cases, the accused may be required to sign a **recognizance**—a guarantee to appear in court when required. A fine of up to \$500 may be levied if the accused fails to appear. Unless the accused comes from another province or lives more than 200 kilometres away, a deposit is not usually required. The police may also request a **surety**, someone who is willing to pay a certain sum of money if the accused fails to appear at trial. The surety also has to sign the recognizance form.

### Bail

Usually the police will try to keep a suspect accused of a serious indictable offence in custody after arrest. In such cases, the accused has the right to apply for bail. **Bail** is the temporary release of a prisoner who posts a sum of money or other security to guarantee his or her appearance in court. A bail hearing must be held before a Justice of the Peace within 24 hours of arrest, if possible.

Section 11(e) of the *Charter of Rights and Freedoms* guarantees that no one is to be denied reasonable bail without just cause. The Crown may request a **show-cause hearing** to convince the Judge that the prisoner should stay in jail until the trial date. "Cause" includes flight (escape) risk, risk to public safety, or any other just cause. If the Crown is successful, the Judge will issue a detention order to keep the accused in jail.

**promise to appear:** a signed agreement that an accused person will appear in court at the time of the trial

**recognizance:** a guarantee that the accused will appear in court when required, under penalty of a fine of up to \$500

**surety:** a person who agrees to make a payment if the accused does not appear at trial

**bail:** the temporary release of an accused who posts money or some other security

**show-cause hearing:** a judicial hearing in which the Crown or the accused has to convince the Judge either to detain or release the accused before trial



**reverse onus:** the burden of proof shifts to the defence

Some circumstances may justify a **reverse onus**, in which the burden of proof shifts; rather than the Crown's having to show cause that the accused should be imprisoned, the defence must show why bail should be granted. This happens when

- the charge is murder
- the accused is charged with committing an indictable offence while already out on bail
- the offence is indictable and the accused is not a Canadian resident
- the charge involves failure to appear or breach of a bail condition
- the accused is charged with importing, trafficking, or possession for the purpose of trafficking narcotics (or conspiracy to commit any of these)

As of May 1, 2008, new bail provisions under the *Tackling Violent Crime Act* require those accused of serious gun crimes to show why they shouldn't be kept in jail while awaiting trial if they are charged with

- using a firearm to commit certain serious offences (attempted murder, discharging a firearm with intent, sexual assault with a weapon, aggravated sexual assault, kidnapping, hostage-taking, robbery, or extortion)
- an indictable firearms-related offence where the accused is under a firearms prohibition order
- firearms trafficking, possession for the purpose of weapons trafficking, or firearms smuggling

## off the mark

by Mark Parisi



Figure 7.17

The Court must also take these additional factors into account in determining whether an accused should be kept in jail pending trial:

- whether a firearm was used in the commission of the offence; and
- whether the accused faces a mandatory minimum punishment of imprisonment of three years or more for a firearms offence.

If an accused falls into one of these categories, bail will be denied unless the accused convinces the Judge that he or she will attend court as required, not commit a crime while out on bail, and not interfere with the administration of justice in any way.



## Habeas Corpus

In our criminal justice system, a writ of *habeas corpus* is an extraordinary remedy with historical roots. It is not commonly used when bail is denied by a competent court. However, if an accused person who has been denied bail believes that he or she has been illegally detained, that person can file a writ of *habeas corpus* to appeal the bail refusal to a higher court.

As you learned in Chapter 1, a writ of *habeas corpus* requires the Crown to produce the detained person in court and then give reasons to justify keeping this person in custody until trial. It also requires the Crown to show that the prisoner is not being mistreated in any way. If the Crown cannot justify the continued detention of the prisoner to the higher court's satisfaction, the Court may order that the prisoner be released until trial.

### R. v. Panday (2007), 87 O.R. (3d) 1

#### Case

Three accused men were charged with extortion-related offences. After their arrests, the accused spent a substantial amount of time on strict bail (house arrest)—32 months for two of them and 34 months for the third. Since none of the accused had a prior record, the trial Judge gave them the minimum sentence agreed upon by the Crown and the accused. She also allowed them credit for the time they had spent on strict bail. The Crown appealed, arguing that no credit for time should be given for strict bail because it is not punishment or imprisonment, and therefore cannot count as part of a mandatory minimum sentence.

In a three-to-two decision, the Ontario Court of Appeal decided that bail, even strict bail, is not the same as punishment and therefore cannot be used to lessen a mandatory minimum sentence. Justice James MacPherson, writing for the majority, stated succinctly, "Bail is not jail." He also said the judges may not like minimum sentences because they are "perceived as harsh or because they reduce judicial discretion in the sentencing process."

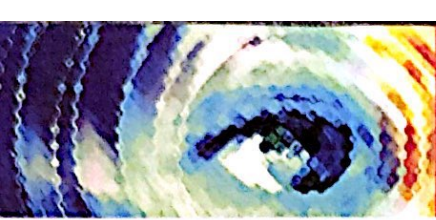
The effect of a mandatory minimum sentence removes much of the discretion that sentencing judges otherwise possess.

1. Do you think that credit for time spent on strict bail by the accused should have been allowed? Discuss.
2. What do you think would be some conditions attached to strict bail?

### Building Your Understanding

1. Describe three types of pretrial releases and identify the situations in which they apply.
2. In most cases, will a person charged with a summary offence be kept in jail before trial? Why or why not?
3. Explain the concept of *reverse onus*. Provide one instance in which reverse onus applies in a show-cause hearing.
4. What does a writ of *habeas corpus* compel the Crown to do?





## Should there be a moratorium on police use of TASERS?

**T**homas A. Swift's Electric Rifle (TASER) was introduced into policing in North America in 1919, and is now used in police work across the United States and Canada. TASERs are hand-held devices that can be fired either by pressing the barrel against a suspect and discharging an electric shock, or from a distance, shooting darts that penetrate clothing and attach to a suspect. The officer then conducts an electric charge via the propelled wires to jolt the individual into submission, either through pain or muscle incapacitation.

According to Amnesty International, more than 300 people across North America died in connection with stun gun use between 2003 and 2008. From 2003 to 2008, there were more than 22 stun gun-related deaths reported in Canada. This number has increased each year as more police departments have adopted TASERs in their police work.

The issue in Canada is whether there should be a moratorium on the use of TASERs by the police.

### PROponents OF TASERS

Proponents say that the use of TASERs can save lives. For example, the Nanaimo police in June 2008 used a TASER on a suicidal man and saved his life. The person had slashed his wrists at a Nanaimo motel, and had lost a large quantity of blood. The police were unable to negotiate with the man. As he raised the knife, the TASER was deployed, and the police were able to prevent him from slashing his throat. The suspect didn't suffer injuries except those he inflicted upon himself.

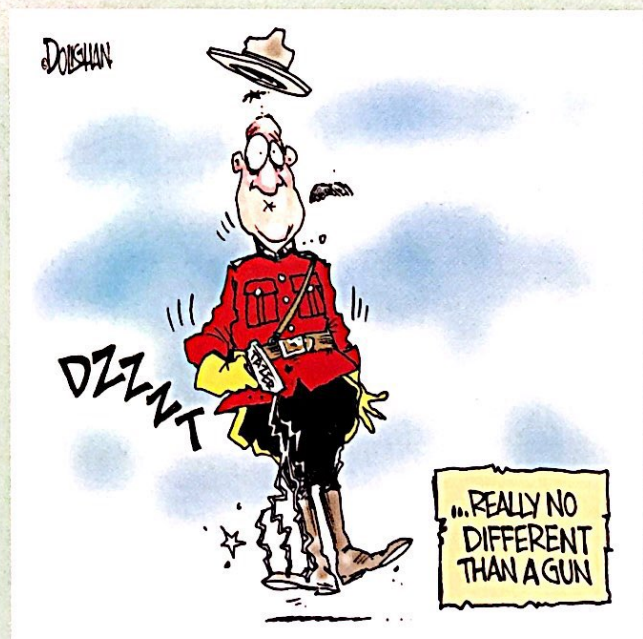
As well, some proponents say the use of TASERs represents an option between deadly and non-deadly force when someone's violent behaviour goes beyond the control of pepper spray. In such a case, the TASER would be another option short of deadly force for containing the individual.

Some suspects are armed with a knife or a similar weapon and refuse to comply with the directions of the police officer to disarm. In such a case, officers must make a decision to employ the electronic control device to quickly ensure public safety as well as their own.

### OPponents OF TASERS

Recently, calls for banning the devices have followed several high-profile deaths. On July 22, 2008, a 17-year-old Winnipeg youth died after being TASERed. The deadly encounter started when two citizens flagged down a passing police vehicle to report that someone was stealing something from a vehicle. When officers confronted the teen in a back lane, he was brandishing a knife and refused to disarm, at which point an officer deployed the electronic control device. Later the youth was pronounced dead at the hospital.

On June 23, 2008, Jeffrey Marreel, 36 years of age, died in custody after Ontario Provincial Police responded to a disturbance near Simcoe, Ontario. Marreel's death was attributed to being TASERed by the police officer. Amnesty International Canada renewed its call for a temporary TASER moratorium after Marreel's death and wanted an independent review of possible risks associated with TASERs.



**Figure 7.18** Which side of the issue does this cartoonist support? How did you reach that conclusion?



RCMP TASER USE BY PROVINCE, 2002–2007

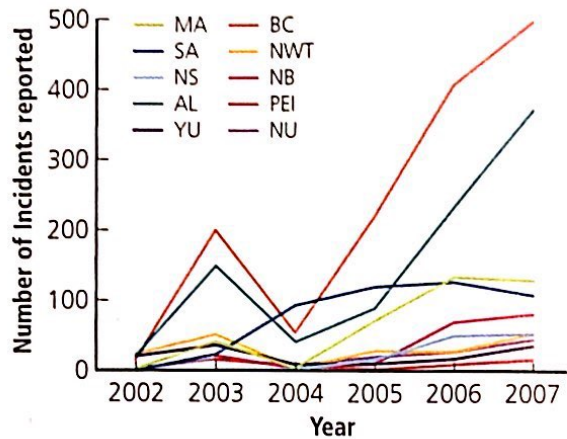


Figure 7.19

Notes: (1) Ontario, Québec, and Newfoundland and Labrador are excluded because of their provincial police forces. (2) Reporting became voluntary in 2004, causing a decline in incidents reported. Reporting became mandatory from 2005.

SOURCE: RCMP data released to the media under the Access to Information Act.

In a case that sparked worldwide controversy, a 40-year-old Polish citizen, Robert Dziekanski, died on October 14, 2007, shortly after being TASERed. The RCMP was responding to a report that he was acting erratically at Vancouver International Airport. The police fired the stun gun less than 30 seconds after arriving to confront him.

A video taken by a bystander started a public outcry and resulted in several inquiries into TASER use by police. In British Columbia, a public inquiry has been looking at TASER use in general as a result of Dziekanski's death. The RCMP pledged to restrict TASER use and give officers clearer direction on how and when to use them following a scathing report by RCMP Public Complaints Commissioner Paul Kennedy.

### CALL FOR A MORATORIUM

The president of the Ontario Criminal Lawyers' Association, Frank Addario, who has called for a moratorium on the use of TASERS pending further study, characterized the device as "a contact weapon that has the potential to be deadly." He further stated that "the circumstances under which it is being used and the justification for its use as opposed to some other manner of controlling the threat needs to be set out and there needs to be standards."

### TASERS IN THE CRIMINAL CODE

Others argue that TASERS are prohibited weapons—a designation that brings much stiffer rules regarding usage. Likewise, any offence with a firearm, such as unauthorized use, would bring harsher mandatory jail penalties. Under the federal *Firearms Act*, which became law in 1998, a prohibited weapon is defined as "any firearm capable of discharging a dart or other object carrying an electrical current or substance, including the firearm of the design commonly known as the TASER Public Defender and any variant or modified version of it."

Provincial policing codes that authorize officers to carry firearms are required to list, by name, the firearms in use. According to Kiedrowski, an Ottawa-based researcher, instead of treating TASERS as "prohibited weapons" and on the "use of force" spectrum, most police forces in Canada, including the RCMP and the Ontario Provincial Police, classified them as "intermediate weapons." British Columbia police complaints commissioner Dirk Ryneveld said that most police agencies in Canada are wrongly operating, likely illegally, under the assumption that the TASER is not a "prohibited firearm." If it is a prohibited firearm, as stated in the *Criminal Code*, then it must be authorized for use.

### Looking at the Issue

1. Write an opinion paper explaining whether you are for or against a moratorium on the use of TASERS.
2. As debate continues about when and how police officers should use TASERS, the stun gun manufacturer is thinking about selling a new consumer version to the public. Discuss whether you agree or disagree with TASERS' being sold to the public.
3. If you were a police officer, and had the authority to use a TASER, under what circumstances would you use it on a handcuffed person? When would you use repeated shocks?



## Reviewing Your Vocabulary

appearance notice p. 203  
 arrest p. 201  
 arrest warrant p. 203  
 bail p. 209  
 bench warrant p. 203  
 centre p. 190  
 chain of custody p. 198  
 citizen's arrest p. 204  
 class characteristics p. 194  
 contamination p. 191  
 crime scene p. 190

detention p. 201  
 fingerprint p. 194  
 forensic science p. 193  
 impressions p. 194  
 individual characteristics p. 194  
 information p. 203  
 latent fingerprint p. 195  
 lineup p. 208  
 peace officer p. 203  
 perimeter p. 191  
 physical evidence p. 193

police log p. 191  
 promise to appear p. 209  
 reasonable grounds p. 202  
 recognizance p. 209  
 reverse onus p. 210  
 search warrant p. 206  
 show-cause hearing p. 209  
 summons p. 203  
 surety p. 209  
 telewarrant p. 208  
 visible fingerprint p. 195

## Quick Quiz

1. Complete the following sentences by selecting the appropriate term from the vocabulary list above.
  - a) In handling physical evidence, it is important to keep the \_\_\_\_ unbroken.
  - b) A(n) \_\_\_\_ must be developed before it can be seen with the naked eye.
  - c) The \_\_\_\_ of a crime scene is where the offence actually took place.
  - d) An accused person is entitled to a(n) \_\_\_\_ if the Crown does not want the Judge to grant bail.
  - e) A(n) \_\_\_\_ gives police the right to examine a particular place, such as a suspect's apartment.
  - f) Evidence that is exposed to \_\_\_\_ may prove worthless in court.
  - g) Anyone who sees another person commit a crime may conduct a(n) \_\_\_\_.
  - h) A fingerprint is an example of the \_\_\_\_ an offender may leave at a crime scene.
  - i) The outer area of a crime scene is known as the \_\_\_\_.
  - j) A(n) \_\_\_\_ is a guarantee that the accused will appear in court under penalty of a fine.
  - k) The general attributes of an object, such as size or model, are called \_\_\_\_.

## Checking Your Knowledge and Understanding

2. Using the four-stage approach to interrogation, develop a list of questions a police officer might ask someone suspected of breaking and entering.
3. For which types of offences will police issue an appearance notice?
4. Explain the difference between a bench warrant and an arrest warrant.
5. What is a telewarrant and when is it used?
6. Describe when the police may search a residence without first obtaining a search warrant.
7. Describe when an arrested person is entitled to a show-cause hearing.

## Developing Your Thinking Skills

8. Conduct research on bail hearings, and write a one-page letter to a friend in another country describing when and how bail hearings are conducted in Canada.
9. You are a police officer who receives an order to respond to a 9-1-1 call. The caller reported an emergency but did not identify the problem.