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SEARCH, SEIZURE AND ARREST UNDER ALBERTA STATUTES*

CHAPTER I

The Purpose of the Study

In our society, the freedom of the individual and the freedom of his home from arbitrary imprisonment and intrusion have long been considered sacred. Enforement agencies, given powers of search, seizure and arrest without warrant, by the legislature, have brought these powerful tools into increasing use in the growing area of "victimless crime". This has lead in some cases to a compromising of the individual's civil rights. The using of these arbitrary powers arbitrarily has lead to an increasing friction between the individual and the enforcement agencies. This in turn has lead to a decline in the respect for these officers and institutions of the law.

Since many of these provisions were enacted in different times under different circumstances, careful scrutiny must be utilized to examine their usefulness today, both from the public's and the enforcement agencies' point of view. This is a necessary thing. A balance must be maintained between the interests of the enforcement agencies and the freedom of the individual. The best method of accomplishing this is to examine the Acts containing such search, seizure and arrest provisions and see how they are administered and enforced. Drawing on this information, one

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*1. Highway Traffic Act, R.S.A. 1970, c. 169.
2. Liquor Control Act, R.S.A. 1970, c. 211.
3. Wildlife Act, R.S.A. 1970, c. 391.

can constructively evaluate the effect, negative and positive, of these provisions in the relevant statutes. This can only lead to more equitable statutes for all concerned.

This study is a follow up look at a more general study respecting search, seizure and arrest under Alberta Statutes conducted by Associate Professor B. M. Barker of the Faculty of Law at the University of Alberta. Instead of examining all the Alberta Statutes containing search, seizure and arrest provisions, this study restricted itself to three Acts: The Highway Traffic Act, The Liquor Control Act, and the Wildlife Act. Each was examined in detail. The purpose of this research was to scrutinize the use of such provisions in these Acts and recommend further on their adjustment.

The study was designed to be an in-depth view of three of Alberta's most commonly used statutes. As such, their search, seizure and arrest provisions would have most contact with the public. As mentioned previously, the interest in this study was prompted by a previous report prepared by Professor B. M. Barker of the Faculty of Law of the University of Alberta. His study was the first of its kind in Alberta, as far as this author knows, and resulted from the Ontario Royal Commission Inquiry on Civil Rights headed by the Honourable James C. McRuer.

The amount of knowledge in this area outside the McRuer Report is minimal. As a result, many problems were encountered in the preparation of this Report. The first question was; what was meant by the terms: search, seizure and arrest? This problem was alleviated by following the

terms of reference used in the Barker Report. Data were not kept respecting many of the examination, inspection and seizure sections of the relevant Acts. These problems will be explained in greater detail in the discussion of the three statutes. To screen statistical data on the number of searches, entries, examinations, inspections, seizures and arests under these Acts, this author went to the various enforcement and administrative bodies charged with instituting them namely: The Attorney General's Department, the City of Edmonton Police, the City of Calgary Police, the Royal Canadian Mounted Police "K" Division, the Liquor Control Board, the Motor Vehicles Branch, Department of Highways and the Fish and Game Branch of the Department of Lands and Forests.

Mr. W. Henkel, Q.C., Assistant Deputy Attorney General of the Province of Alberta, acted as liaison between myself and these enforcement and administrative agencies in charge of each of the statutes. Each of these agencies was most cooperative and allowed me to examine almost every avenue. A second problem then arose. The information respecting the number of searches, seizures and arrests was kept, but in a form readily adaptable to the agency keeping it; not in a form readily adaptable to my research.

The majority of agencies encountered under this study maintain information that was helpful in my study. Both the City of Edmonton and the City of Calgary publish annual police reports (copies of which are available to the director) which are the main source of information from these two agencies. The City of Edmonton has just recently computerized their annual report and can only go back two years (1969) for my purposes. The information prior to 1970 is not helpful

either as it lists the total number of arrests and summons as one composite figure. The information is put into the computer in this fashion and can only come out in like fashion. The R.C.M.P. keep data on their enforcement of these Acts for a two year period; anything that is older than this is destroyed. Carbon copies are sent to the Attorney General's files where they are stored. Theoretically, this should be the department where all the information is obtainable. However, this department does not view its operation as a statistical one and the data contained in alphabetical files are not retrievable. [A sampling would be required due to the large number of files (in the hundreds of thousands).] The system works well for the Attorney General's Department as they are interested in individual cases and the information is easily retrieved by this method.

Therefore, the study can only go back two years to give a fairly standardized enforcement picture in Alberta. The City of Calgary was able through its computer to give me statistics for that period in the areas that I requested. There remains only one caution that need be mentioned here; statistics are not always indicative of the real picture; they can be very useful aids in the analysis of trends. In this study they are even less accurate as they come from many different agencies using different methods of collection and reproduction. (The enforcement agencies are standardized in their production of statistics to the extent required by the Dominion Bureau of Statistics in their Uniform Crime Reporting System.) The statistics obtained give some indication of how these powers are used but not a truly accurate one. Much of the information that we required,

particularly with respect to the Highway Traffic Act was not kept. In instances like these, this author had to rely on the educated memories of the enforcement and administrative officers. Again, while these statistics may be fairly accurate, they are a representative of a picture only--not a completely accurate representation of the situation.

The analysis of the Wildlife Act concerned only one agency--the Fish and Game Branch of the Department of Lands and Forests. Through the invaluable aid of the assistant administrator of this Branch, Mr. E. Psikla, information respecting searches, seizures and arrests effected under the Wildlife Act was obtained. These data were supplied by the various district offices throughout the province and covers the period July 1, 1970, to August 15, 1971. No conflict regarding data from other administrative or enforcement agencies was encountered because only the R.C.M.P. is involved in this area under a federal statute. Again, statistics respecting search, seizure and arrest under the statute are not kept for a study such as this--the data is obtained in retrospect and suffers from some of the inaccuracies common to all data gathered for the purposes of this study.

A report of this type will be easier to produce in the future. Many of these agencies, particularly the Attorney General's Department, are now adapting their systems of recording to computers. Under a new system instituted last December, 1970, the Attorney General's Department computer network is picking certain information from the Traffic Ticket, Traffic Ticket Summons, and the information. Surprisingly enough, they do not have a check off point to

show whether a search, seizure or an arrest was associated with that particular incident for which or in conjunction with which a summons was issued. Both the City of Calgary and the City of Edmonton are constantly expanding the computer base of their reports to include more information to satisfy the requests of such outside groups as the Institute and the various university departments.

The more specific problems encountered will be better understood if explained within the analysis of the Act under which they fall.

METHODOLOGY

This study was undertaken with two specific objectives:

1. To examine the search, seizure and arrest provisions of the Highway Traffic Act, the Liquor Control Act and the Wildlife Act. Then, by means of a statistical study, to investigate the extensiveness of their use. The breakdown of the search, seizure and arrest provisions was from a previous report. Two main agencies were surveyed to obtain this statistical information: the administrative agency in charge of the Act and the enforcement agencies concerned with its enforcement. To this end, visits were made to: the City of Edmonton Police Department, the City of Calgary Police Department, the R.C.M.P. (enforcement agencies), Attorney

General's Department, the Motor Vehicles Branch, the Liquor Control Board and the Fish and Game Branch of the Department of Lands and Forests.

As mentioned previously, due to administrative problems the length of the study can only extend back two years. This may be impossible in some cases--as general records on the cases falling under some provisions are not kept. Indeed, some sections are used so infrequently that the opinions of enforcement officers as to their use was the only source of information. Many times, the seizure information is an educated implication from the number of offences recorded against certain sections of the Act. This will be explained in greater detail under the analysis of each statute.

2. To determine the reasons for the particular search, seizure and arrest provisions and compare this with their use so as to make recommendations regarding them. Again, the various enforcement and administrative agencies provided the information for this aspect of the study. The major question to be asked here is one of civil rights--does the avowed purpose and use of the Act coincide? Do they justify intrusions into the privacy of the individual? These questions must be answered in light of the statistics obtained, the background behind

the Act and the types of criticisms voiced in the McRuer Report on Civil Rights in Ontario.

CHAPTER II

HIGHWAY TRAFFIC ACT

In our modern society, most individuals either own or can operate a motor vehicle. A motor vehicle is a dangerous piece of machinery; in some circumstances, it can even be a lethal one. It is for that major reason, that governments have stepped in and regulated the manner in which a motor vehicle is driven and stipulated the conditions under which it is driven. Thus, the Act is a regulatory statute not one of a prohibitive nature.

In order to enforce the Act, the various agencies are given wide powers including those involving search, seizure and arrest. Some fifteen provisions cover this area under the Act according to Professor Barker's report. Their use and effectiveness can be best appreciated if they are examined section by section which I propose to do.

I

SEARCH PROVISIONS

The search provisions under the Highway Traffic Act are provisions more of an examination and inspection nature. They make up part of the enforcement agencies' powers and they are used without a notation being made of such use unless an offence is encountered. It is for this basic reason that statistical information on many of the provisions was difficult to obtain.

1. Demand Production of License

> 24.(1) Every person driving a motor vehicle shall carry his operator's licence with him at all times during which he is in charge of a motor vehicle and shall deliver it for inspection to a peace officer when demanded by any peace officer.
>
> (2) Every person while engaged in instructing a student driver shall carry his operator's licence with him at all times during which he is so engaged and shall deliver it for inspection to a peace officer when demanded by any peace officer.

This power is essential to the operation of the statute. it allows the government to identify the driver of every motor vehicle so as to regulate his driving. The license provides the enforcement agencies with a vehicle by which they can identify an offending driver for the purposes of summoning him under the Traffic Ticket (Summary Convictions Act, c. 355, R.S.A. See Appendix Example). If the driver of a motor vehicle did not have to present his license on demand, it would make the statute a farce. Without means of identifying offending drivers, the Act cannot be enforced. License plates are a means of identifying the owner of the car and the vehicle itself. However, many times the offending driver is not the owner and it is a heavy burden to lay upon each owner the responsibility for every offence committed by some driver of his vehicle.

The McRuer Report recommends that a failure to identify one's self by means of a drivers' license while in control of a motor vehicle should be an arrestable offence.

Summoning in such circumstances is useless and arrest is the only means of compelling the attendance of the accused before a magistrate. Therefore, the production of one's operators license is an important power and while a person is in control of a motor vehicle it is not an intrusion upon his civil rights since the license is provided by the government for a small fee.

The operator's license is also a means of compelling some uniformity in the skills and abilities of the operator of motor vehicles in the province. The license shows that the driver has passed the minimum standard tests provided by the government and is qualified in their eyes to drive a vehicle. This is just another facet to the regulation of motor vehicles and their use within the province.

Statistically, information on the production of an operator's license was difficult to obtain. Under enforcement agency procedure, every time a peace officer pulls over the driver of a motor vehicle, he requests the production of the operator's license, the financial responsibility card and the certificate of registration. If no offence has been committed, or a warning is given or an inspection is carried out, then no statistical record is made of the request. The peace officer has the power to demand production of these documents and he uses the power without making a physical notation of it.

Some statistical information was available, however. The number of times that an operator failed to produce his license might give some indication of the relative use of this power. Since no administrative agency other than the

Public Service Vehicles Inspection Branch of the Department of Highways is involved in the enforcement of the Act, the enforcement agencies were the best source of information. Below are their statistical data on the number of times that a person failed to produce his operator's license.

Year	Edmonton	Calgary	R.C.M.P.	Total
1969	2,016	1,163	2,438*	5,617
1970	2,132	1,421	2,780*	6,333

*The R.C.M.P. statistics, here are a composite figure. They gave this author the information jointly for the number of times that a license and certificate of registration were not produced.

The increase of 1970 over 1969 can probably be attributed to the increase in the motor vehicle population in the province during that span of time (for further information see Appendix).

2. Demand Production of Registration

34.(1) Every driver of a motor vehicle shall produce the certificate of registration of the vehicle upon demand by any peace officer.

(2) Where the vehicle is being operated

(a) with licence plates issued pursuant to section 39, or

(b) by an appraiser who has custody of the vehicle for the purpose of appraisal, or

(c) by a mechanic who has custody of the vehicle for the purpose of repairs,

the peace officer shall give the driver of the vehicle reasonable time within which to produce the certificate of registration of the vehicle.

(3) Where a person produces to a peace officer a certificate of registration that is illegible or defaced or altered contrary to section 33, the peace officer shall give the person a reasonable time to produce a replacement certificate of registration issued under this Act.

A certificate of registration is provided to the owner of motor vehicles so that the number and types of vehicles can be kept track of by the Department of Highway's Motor Vehicles Branch. This system also provides a method whereby ownership of a vehicle can be shown. This is extremely helpful to the enforcement agencies in their attempts to apprehend violators who are using stolen vehicles. A certificate of registration and license plates also provide a means of taxing the owners of motor vehicles. The operator's license identifies the driver as a qualified individual for the purpose of operating a motor vehicle. It does not identify him as the owner of the car. The registration certificate fulfills this need.

The failure to produce such a registration certificate should not be a serious offence. If the driver can be identified satisfactorily by means of an operator's license, then he should be allowed time (24 hours) to produce his registration certificate or a valid reason for his failure to do so. If, however, the driver fails to produce either

within a specified time limit, then some sort of arrest or detention will have to be made.

As far as securing statistical information on the number of times that the production of the certificate of registration was requested; similar problems were encountered as with, the demand for production of an operator's license. The power is part of police procedure when a motor vehicle is pulled over. It mostly serves as a means of identifying the owner of the car (who is usually the driver) and the ownership of the car. When everything is in order and no summons is issued, then no notation is made of the demand for these papers. Only if there is an inspection team out, will the number of cars stopped be noted. Again only the number of times that a person failed to produce his certificate of registration is noted--the enforcement agencies are interested statistically in violators only. Below are the data gathered from the three sources of enforcement information.

Year	Edmonton	Calgary	R.C.M.P.	Total
1969	2,359	507	2,343*	5,214
1970	2,345	413	2,780*	5,538

*The R.C.M.P. statistics are a composite figure. They gave this author the information jointly for the number of times that a license and certificate of registration was not produced.

Due to the composite figure, an accurate analysis cannot be given. However, the general increase is probably due to the increase in the motor vehicle population over the period studied. The tremendous difference between

Calgary and Edmonton can be explained in part by the difference in population between the two centers. Another reason for the large gap between their reported occurrences is Calgary's heavier reliance on the use of warnings over the issuance of the five dollar summons.

Both of these powers are essential to the enforcement of the Act and as such are not a great burden on the individual who should and does expect to carry such documents as part of his responsibility for driving a car.

3. Inspection of Foot and Hand Brakes

67.(1) In this section "Motor Vehicle" includes a tractor and a self-propelled implement of husbandry.

(2) Every person driving a motor vehicle on any highway shall upon request of a peace officer

(a) permit the officer to inspect and test the brakes with which the motor vehicle is equipped and for that purpose to operate the vehicle, or

(b) at the option of the officer, operate the motor vehicle as directed by the officer for the purpose of the inspection and testing of the brakes,

and the officer shall, if the brakes are inadequate, notify the driver of the vehicle thereof and thereupon the driver shall forthwith proceed to have the brakes made adequate.

(3) Where the service brakes of a motor vehicle equipped with two-wheel brakes are not capable of bringing the vehicle to a standstill within 40 feet from the point at which the brakes are applied while the vehicle is loaded to its full capacity and moving, on a level surface consisting of dry paving of asphalt or concrete free from loose material, at a speed of 20 miles an hour, the service brakes of the vehicle are inadequate.

(4) Where the service brakes upon any motor vehicle other than a motor vehicle mentioned in subsection (3) or any combination of vehicles are not capable of bringing the vehicle or combination of vehicles to a standstill within a distance of 30 feet from the point at which the brakes were applied, when the brakes are applied while the vehicle or combination of vehicles is loaded to its full capacity and moving, on a level surface consisting of dry paving of asphalt or concrete free from loose material, at a speed of 20 miles an hour, the service brakes of the motor vehicle or combination of vehicles are inadequate.

(5) Where the emergency or parking brake upon a motor vehicle or combination of vehicles is not capable of bringing the motor vehicle or combination of vehicles to a standstill within a distance of 55 feet from the point at which the brake was applied, when the brake is applied while the motor vehicle or combination of vehicles is loaded to its full capacity and moving, on a level surface of dry paving of asphalt or concrete free from loose material, at a speed of 20 miles an hour, the emergency or parking brake of the motor vehicle or combination of vehicles is inadequate.

(6) The emergency or parking brake of a motor vehicle or combination of vehicles shall be capable of holding the vehicle or combination of vehicles at a standstill upon any grade upon which the motor vehicle or combination of vehicles is opeated.

> (7) All brakes shall at all times be maintained in good working order and shall be so adjusted that the brake pressure upon the wheels on each side of the vehicle is as nearly as possible equal.

The provision for the testing and inspection of the hand and foot brakes of a motor vehicle is a variant function of The Traffic Act--to make sure that all equipment on all vehicles is working at full efficiency. To ensure this, enforcement agencies must have the power to inspect and test the equipment. This can be done at either a roadside check or through the means of an inspection team examining cars in a certain area. While the testing may be inconvenient--it is far less inconvenient than a serious accident with resultant loss of life and property. A vehicle inspection tag should be issued for faulty equipment. If the offender does not repair the defect within the time allowed or does not secure an extension, then he should be served with a summons. Penalties should be then for failure to comply with the statutory provisions regarding equipment but they should not be invoked unless a warning has failed. The purpose of the Act here is to set minimum standards for the operating condition of equipment and the compliance with such by the motor vehicle's operator; not to penalize those for failing to do so.

Provision is also made for testing of the vehicle's equipment through section 187 which shall be discussed later. This section concerning brakes is the only one with its own testing and inspection subsection. Fairly accurate statistics are available on the number of times a summons was issued for defective brakes.

Year	Edmonton	Calgary	R.C.M.P.	Total
1969	490	99	1,966	2,555
1970	596	59	2,144	2,799

The statistics show that the number of occurrences increased in 1970 over 1969. This may be attributed to two reasons: (1) the number of older cars increased and more were checked for defective equipment, (2) the vehicle inspection centers were discontinued thereby allowing older cars on the highway which would have been removed under the old plan and contributing to increased police enforcement. The Calgary data are puzzling, however--they showed about a 50% decrease over the period studied. Two reasons may account for this--they may concentrate more on giving warnings respecting defective equipment or their computer set up may be misleading. The computer is coded only to note the most serious offence. A person may have committed a more serious offence against the Act plus have faulty brakes. Only the most serious offence would be noted.

4. Demand Pedestrian Give Name and Address

> 182 Any person crossing or walking upon a highway in a manner contrary to this Act or any municipal by-law regulating pedestrian traffic shall, upon request, give his name and address to any peace officer.

This section may appear odius to some since it purports, on first look, to give the enforcement officer

the power to demand from any pedestrian his name and address. Failure to do so could result in arrest under section 191 of the Act. However, upon closer examination, the pedestrian is protected by several conditions precedent in the section. The policeman cannot arbitrarily stop and question everyone on the street. Before the pedestrian has to provide the requested information he must either be crossing or walking upon a highway in a manner contrary (1) to this Act, or (2) any municipal by-law regulating traffic. These conditions precedent cover a lot of ground. With the advent of hitchhiking, the use of this section will probably come into greater use. It is designed to accomplish for the police with respect to the pedestrian the same job that sections 24 and 34 are designed to accomplish with respect to the operator and vehicle: identification. This provision provides the police with a method for controlling pedestrians. They could not hope to cope with problems such as jaywalking if they had to deal with an unidentified offender. These offences are not serious offences and the power of arrest for the failure to provide this information is not warranted. Most persons co-operate with the police as shown by the data below. (The data represent pedestrian offences--not necessarily violations of section 183.)

Year	Edmonton	Calgary	Total
1969	4,263	676*	4,939
1970	4,441	559*	5,000

*The great difference between Calgary and Edmonton appears to be one involving enforcement procedure.

No record of the number of offences against section 183 appears to be kept in Calgary since they could not provide this information. The R.C.M.P. also failed to provide any information regarding the number of offences against section 183. This is probably because of the minuscule number of offences encountered against that section. Edmonton could give some data on the offences enumerated against this section.

1970	5 occurrences, 4 convictions
1971 to date	3 prosecutions, 3 convictions

The number of occurrences in comparison with the number of pedestrian offences indicates that most persons are cooperative with the police in this respect.

The violations that they are committing are not so major as to necessitate the possible use of an arrest power. (If the desired information cannot be obtained by some other means, then the offender should be let go with a reprimand.)

Another problem is capable of arising in this area. By the very wording of the statute, any small infraction of the laws relating to pedestrians makes the violator open to the request for information. Such a law is capable of abuse and may be used to derive information from an individual who is unaware of his infraction. This may result in a negative response on his part to the officer's questions. Laws such as these which are capable of abuse tend to lead to more hostile environment for the enforcement officer if they have been abused.

5. Inspection and Testing of Vehicle

187.(1) A peace officer may require the operator of a motor vehicle to submit the motor vehicle, together with its equipment and the trailer, if any, attached thereto, to examination and tests to ensure that the motor vehicle is fit and safe for transportation.

(2) If the vehicle, equipment or trailer is found to be unfit or unsafe for transportation or dangerous to passengers or the public, the peace officer making the examination or test

(a) may require the operator of the vehicle to have the vehicle, equipment or trailer rendered fit and safe for transportation, and

(b) may order that the vehicle or trailer be removed from the highway until the vehicle, equipment or trailer has been rendered fit and safe for transportation.

(3) An operator

(a) who fails to comply with a requirement of subsection (1) or (2), or

(b) who in contravention of an order under subsection (2) operates a vehicle, equipment or trailer on a highway before it has been rendered fit and safe for transportation, or

(c) who fails to comply with the direction of a peace officer given pursuant to subsection (5),

is guilty of an offence.

This section is closely allied to the provisions relating to the inspection and testing of brakes (s. 67). It is a general power that allows for the testing of most of the vehicle's equipment--brakes, lights, horn, mud flaps, windshield wipers. Statistics on its use are extremely difficult to compile.

The peace officer can order any vehicle or trailer off the road to submit to whatever tests he feels are necessary under the circumstances. There are no specific conditions precedent laid down to aid the officer in deciding which vehicle he pulls over. The decision is completely left up to his own discretion tempered by his experience. Usually, the isolated incidences of vehicles being pulled over are cases involving older vehicles obviously in need of repair. Most vehicle inspections are those conducted on a large scale by the R.C.M.P. or municipal police forces. A roadblock is set up and all vehicles are pulled over and checked for certain defects and information. Roadblocks are set up arbitrarily with some consideration to the accident record and the enforcement picture of the area. An example of the full scale roadblock test is on the attached pages from Calgary. The information is fairly self-evident. This procedure was only initiated about 6 months ago (February 1, 1971) and since that time 16 reports have been submitted. The reports are prepared using a different format so that information was difficult to correlate. Roughly, however, 8,500 infractions of various types were encountered. The actual number of cars checked could not be obtained. The number of checkpoints set up was also impossible to determine since in each period the number of checks depended on what

Enforcement during the above period, was directed improper turns, traffic lights, stop signs and pedestrian infractions.

During this time special attention was given to several of the intersections with bad accident ration. Namely Macleod Trail, at Glenmore Tr, and at Mission Rd. also 16th. Ave. North, at both 19th. St. N.E. and N.W. also given attention wer Crowchild Tr. at 50th. Ave. and 33rd. Ave. S.W., 17th. Ave. at 37th. St. SW. and 17th. Ave. in general. Extra units were placed in the downtown area, and Zone 3 and 4, when they were available. Check points were set up, at Memorial Drive and 16th. St. N.W. and 37th. St. SW. south of Richmond Rd. Vehicle operators were warned and summonsed for various infr cti

Schools were not in effect during this week, Playgrounds were given attention by the radar cars. Extra Radar car was used on Saturday evening.

During the A.M. Shift on 13th. and 14th. April, the radar was only in operation for approximately one hour each day, due to mechanical deffects in the machine and in the radar cars. Motor cycles were used where possible, however othe duties, and only having a staff of two motor cycle officers on 2nd. relief, reduced the effectiveness of the program.

1st. RELIEF 7.00AM. to 3.00P.M.

Tuesday April 13th.

Summons....27.
Warnings....18.
Tags.....27.
Speeding.... 4.

Wednesday April 14th.

Summons.....22.
Warnings.....25.
Tags.....12.
Speeding..... 1.

2nd. RELIEF 3.00PM. to 11.00PM.

Thursday April 15th.

Summons....54.
Warnings....12.
Tags..... 3.
Speeding....21.

Friday April 16th.

Summons....57.
Warnings....6.
Tags.....4.
Speeding....38.

Saturday April 17th.

Summons....60.
Warnings....12.
Tags..... 9.
Speeding....38.

April 18/71 no arrests.

REPORT BY		APPROVED BY	RANK
	A/P/Sgt. Ferrier		

The following is a resume of duties performed by the Selective Enforcement Detail for the period of May 4th. to May 8th. 1971 inclusive.

During this time numerous special attention areas, were covered for infractions ranging from speeding to failing to stop for red traffic lights. Besides giving special attention to complaint areas, special attention has been given to high accident areas, as well as no left turns between 7 - 9 A.M. and 4 - 6 P. M.

Radar has been set up at 26th. St. S. W. and Bow Trail as well as giving special attention to the Traffic Lights at this location.

To date, very few speeders have been apprehended at this location, mainly due to the heavy volume of traffic.

Several summonses have been issued for failing to stop for the Red Traffic Li

The following is a break down of enforcement, for the noted period.

	TOTAL SUM.	SPEEDERS	CARELESS	R.O.W.	TAGS	WARNINGS	ARRESTS	ARMED.	MISC'S
TUES.	50	16	0	1	0	0	3		0
WED.	51	22	1	2	4	2	0		1
THURS.	80	34	0	0	0	4	1		2
FRI.	65	34	1	0	17	4	0		4
SAT.	68	46	5	1	7	8	4		2
TOTALS	314	152	7	4	28	18	8		9

May 11/71

Respectfully submitted

REPORT BY	APPROVED BY	RANK
	F. M. Burns D/Sgt.	

The undersigned wishes to report that the Enforcement Detail has the following to report for the above period.

Speeders	95
Careless Drivers	2
Arrests	8
other Summones	160
Warnings	34
Abandoned Vehicles	2
Tags	28
Total Units	329

In addition to the above the special attention box has been checked daily and numerous cards are being removed as they are either outdated or produce very poor results.

Respectfully Submitted

G.R.W. McBean

G.R.W. McBean T.A.P. Sgt.

20/6/71 to 26/6/71

REPORT BY	APPROVED BY	RANK

personnel were free to carry out such inspections and how much free time they had. The checkpoint areas for each time period were pre-established but the number of times that they were enforced varied.

The City of Edmonton has a similar plan in force. Again statistics were difficult to obtain. No report of the checkpoint showing the enforcement is sent to the officer commanding, Traffic Division, as in Calgary. The only indication of how many vehicles were inspected lies with the number of Vehicle Inspection Tags (VIT) issued. These are issued when enforcement officers set up a checkpoint in a certain area and certain defects in equipment are noticed. One problem with this statistic does occur. When inspecting a vehicle many other types of violations besides mechanical defects may be looked for as encountered. As a result the number of "VIT" tags does not indicate by any means the number of cars inspected under this power in a year. In 1969, in Edmonton, 2,908 "VIT" tags were issued; down almost 3,500 from the year before. This great decrease was undoubtedly the effect of the Motor Vehicle Inspection Branch set up by the Department of Highways. This service did contribute greatly to the increased roadworthiness of motor vehicles in the city. The number of "VIT" tags issued in 1970 remained fairly stable at 2,811.

The Royal Canadian Mounted Police gave me a statistic relating to sections 187, 193 and 194 as a composite figure. Their inspections would also take place as a result of a checkpoint procedure and discretionary action. In comparisons with the city, their inspections

are very large; (1969) 23,441; (1970) 24,903. This may be due to the stricter enforcement of the roadworthiness of cars on the highway, the greater mileage travelled and the poorer condition of vehicles in the rural areas. However, the data are a composite statistic and should be viewed with some suspicion.

Vehicle inspections are an inconvenience, but are necessary inconveniences. Without them, the provisions in Part III of the Highway Traffic Act regarding standards for equipment would be unenforceable.

6. Forcible Entry of Vehicle

> 193. When necessary to remove, take or store a motor vehicle as authorized by this Part, a peace officer or his agent may forcibly unlock or open a door of the vehicle and do such other things as are reasonably required to facilitate the removal, taking storing of the vehicle.

Statistics are almost non-existent respecting this provision. This is due to the fact that it is a procedural provision. The enforcement officer has the power and he uses it when the situation deems it necessary. No physical note to be compiled into a statistic is made. There may be a note made with respect to individual cases but unless we know of the individual cases, statistics are nearly impossible to obtain. The provision, at first glance, purports to grant a broad power to the peace officer. The individual is protected, however, by some conditions built into the provision--the officer may only do what is "reasonably required" to facilitate the removal or the taking of the vehicle. It appears open to judicial decision as to what constitutes

"reasonably required". The lack of statistics respecting this section would seem to indicate that it enjoys little use or abuse. Only the R.C.M.P. could supply any data in this area and that in the form of a composite figure for sections 187, 193 and 194 (see above #5). By far, most of these cases would fall under section 187.

7. Right of Entry to Garages

> 194. Any peace officer has the right and power without further authority to enter in the interval between six o'clock in the morning and nine o'clock in the evening of the same day
>
> (a) the business premises of any dealer in motor vehicles or person conducting a motor vehicle livery, or
>
> (b) any other place where motor vehicles are kept for hire or sale, or
>
> (c) any garage or place of business where motor vehicles are repaired,
>
> for the purpose of ascertaining whether or not this Act is being complied with in respect of the motor vehicles in any of such places and by the several employees therein.

The major problem with this provision giving right of entry to garages is its vagueness with respect to the purpose of the section. The wording "of ascertaining whether or not this Act is being complied with in respect of the motor vehicles in any of such places" is very broad and ambiguous. A great number of offences could be included in those words. This section is probably designed to allow the enforcement agencies to keep a close watch on the Service Centers and garages in matters of stolen automobiles and

damaged automobiles. If so, then the section should state this in general terms but not nearly as general as those presently used which are capable of abuse. The constable should entertain a reasonable belief or suspicion that the Act is not being complied with. As it stands presently, he can enter the premises without any such belief and inspect the place until some non-compliance is found. Whether or not this is being done, it should not even be capable of happening.

Again the only statistics regarding the use of the provision were those provided by the R.C.M.P. The statistics are presented in the composite figure used in the previous discussions on sections 187 and 193. It suffers from the same criticisms mentioned there.

II

SEIZURE PROVISIONS

The seizure provisions under The Highway Traffic Act, for the purposes of this study, involve those provisions which permit the detention of a motor vehicle, and/or piece of equipment. These may involve "seizures" or "detentions" for inspection purposes, evidentiary purposes, or respecting violators of the Act. Some of the seizure provisions do not enjoy that much use--so no data of a statistical nature regarding their employment could be found. Again, the three major enforcement agencies in the province--The City of Edmonton Police, the City of Calgary Police and the R.C.M.P. were the sources of information.

1. Seizure of License Plates

47. Any peace officer who has reason to believe that a motor vehicle is carrying licence plates

(a) that were not issued for it, or

(b) that although issued for it were obtained by false pretences,

may take possession of those licence plates and retain them until the facts as to the carrying of those licence plates have been determined.

This is a discretionary provision in the Act. If the enforcement officer finds as a result of a routine check that there is some discrepancy between the license plates and the registration certificate, then he has the power to seize the license plates until the truth about their use has been verified. In most cases, a summons, only, is issued. However the plates can be seized and if such is the case, a report must be made out and the plates have to be sent with the report to the Motor Vehicles Branch. The driver whose plates were seized may pick them up at the police station if the problem or discrepancy is rectified quickly enough.

Drivers who are driving under suspension are another group of individuals whose license plates would be seized upon apprehension. Under section 265 of The Highway Traffic Act, they are under the onus of returning their license and plates after the suspension to the Motor Vehicles Branch.

256.(1) An owner or driver

(a) whose registration or licence has been suspended as herein provided, or

> (b) whose policy of insurance or surety bond has been cancelled or terminated as herein provided, or
>
> (c) who neglects to furnish additional proof of financial responsibility upon the request of the Minister as herein provided,
>
> shall immediately return to the Minister his operator's licence, the certificates of registration of any motor vehicles registered in his name and all licence plates issued upon the registration of his motor vehicles.

If they fail to do so, the Motor Vehicles Branch has the authority to authorize a peace officer to secure possession of them.

> (2) If any person fails to return his licence, certificates of registration and plates as provided herein, the Registrar or his deputy may cause a request to be made to any peace officer to secure possession thereof and return them to the office of the Minister

Only two bodies could provide statistics concerning the use of this seizure power (section 47). The R.C.M.P. reported 84 license plate seizures in 1969 and 96 seizures in 1970. These figures would include license pickup requested by the Motor Vehicles Branch. The latter body provided data representing the number of requests sent out by them over a two-month period from June 15, 1971, to August 17, 1971. This small survey was necessitated because of the lack of information provided by the enforcement agencies. These agencies seize the plates, make a report and send these to the Motor Vehicles Branch. A copy of the report is placed

in the operator's standing file kept by this body. No long term statistic is kept on the number of license plate seizures made. However the Motor Vehicles Branch could provide data representing the number of requests for seizures sent out during the short time period. During this period 103 requests were sent out for seizure of plates for failure to satisfy a financial judgment resulting from an accident. Additionally 249 requests were sent for seizure of license plates concerning: suspended drivers, insufficient fees paid for registration, NSF cheques paid for license plates and the lapsing of liability insurance for taxi cab drivers. Thus, over a two-month period 352 requests were sent for license pickups. These are in addition to discretionary seizures made by the enforcement agencies.

2. Seizure of Radar Device

80.(1) No person shall drive upon a highway a vehicle that is equipped with or that carries or contains a device capable of detecting or interfering with radar or such other electronic equipment as may be used from time to time for measuring the speed of vehicles.

(2) Subsection (1) does not apply to

(a) a vehicle used by a peace officer in the course of his duties, or

(b) a vehicle used by a person in conducting a traffic survey authorized by the Minister.

(3) Where a peace officer apprehends a person operating a motor vehicle contrary to subsection (1), the peace officer may seize the device or equipment and it is forfeited to the Crown.

This provision is a relatively new seizure power. It was necessitated by the use of devices to interfere with or detect the new radar equipment employed by enforcement agencies in the apprehension of speeders. Since the equipment would be difficult to procure, this problem is not a large one. The statistics represent the number of offences against the provision (1) and in all of these cases, the devices would be seized and forfeited.

Year	Edmonton	Calgary	R.C.M.P.	Total
1969	6	2	13	21
1970	5	5	16	26

The use of forfeiture (as provided in the section) is not a stiff penalty in the light of the reasons prompting the section. Speed limit enforcement would be effectively curtailed if everyone was allowed to possess such devices. The whole reason behind radar would be thwarted, if this was only a summons offence.

3. Seize Traffic Sign

159.(1) No person shall place or maintain or display in view of persons using a highway any sign, marking or device

(a) which purports to be or is in limitation of or resembles a traffic control device, or

(b) which gives any warning or direction as to the use of the highway by any person.

(2) Subsection (1) does not apply to the placing, maintaining or displaying of a sign, marking or device

(a) on publicly owned land by or under the authority of the Minister with respect to highways under his jurisdiction or the council of a municipality with respect to highways under its jurisdiction, or

(b) on privately owned land for the purpose of regulating, warning or guiding traffic on a privately owned highway.

(3) When a sign, marking or device is placed, maintained or displayed in contravention of subsection (1), a peace officer or a person authorized by the Minister or the council of a municipality may, without notice or compensation, remove the sign, marking or device and may, for that purpose, enter upon privately owned land.

Improper traffic signs do not appear to be a large problem in the cities. It is handled, when it appears, by the engineering departments of Alberta's major cities. Neither could provide any statistics to indicate the extent of the situation except to say that it was not even serious enough to warrant a record being kept.

The section does cover what could be a serious problem if it got out of hand. Improper traffic signs could result in many serious accidents and loss to both property and life. The peace officer should have the power to correct the situation when and where he encounters it. This provision grants the enforcement officer ample power to do so. He

cannot enter private land to search out such devices--they must be present and obvious to him. Perhaps, outside of an emergency, the possibility of judicial scrutiny should be investigated with respect to entry on private land to seize the improper device or sign.

The problem of improper signs seems to be a little more prevalent on the highways of Alberta. The R.C.M.P., policing all of rural Alberta and some smaller cities, contributed data indicating the minor importance of the problem. Only 7 occurrences were reported against this section in 1969 and 8 occurrences in 1970.

The provision is most necessary if proper traffic supervision is to be maintained without incident or interference.

4. Seizure of Domestic Animal on Highway

> 170.(1) No domestic animal shall be on a highway unless it is in direct and continuous charge of a person who is competent to control it and who is controlling it in such manner that it does not obstruct or cause any damage to the highway or create any hazard to traffic on the highway.
>
> (2) An employee of the Department of Highways and Transport or a peace officer may take into custody any animal that is on a highway contrary to subsection (1) and cause it to be taken to, fed and kept in a suitable place, and he has a lien upon the animal for the expenses of the removal, care, feeding and keeping of the animal.

The above provision covers a situation that is extremely rare in urban Alberta. As a result, the Municipal Police Forces were unable to provide any data on its use, if there were any. Only the R.C.M.P., who police rural Alberta, could supply any information. In 1969, there were 38 occurrences against the section and this increased to 46 occurrences in 1970.

As is illustrated by the above figures, the section does not enjoy widespread use, but it does provide a means by which persons authorized under the Act can clear the highways of domestic animals. Provision is made for their well being and care at the owner's expense. Herein, lies the only criticism relating to this section. The McRuer Report on Civil Rights in Ontario appears apprehensive about liens on objects seized when a fine is also payable. This argument may be applied here. As shown by the below subsection, the owner or person in control is liable on summary conviction to a fine of not more that $50.00.

> (4) Notwithstanding any action that may have been taken under subsection (2), the owner of an animal that is on a highway contrary to subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than $50.

The purpose of this provision is to keep unrestrained domestic animals from the highways. The owner of such animals is no more interested in seeing his animals loose on the highway than the government is. The payment of a fine should reimburse the government for the expenses of removal, care, feeding and keeping of the animal without an additional assessment.

5. Stop Vehicle and Forbid its Movement

> 184. Every driver shall, immediately he is signalled or requested to stop by a peace officer in uniform, bring his vehicle to a stop and furnish such information respecting the vehicle as the peace officer requires and shall not start his vehicle until such time as he is permitted to do so by the peace officer.

Without the above power, peace officers could not enforce this Act. If they did not have the basic general power to compel a vehicle to stop, then apprehension would be impossible. This section is sometimes used for investigative purposes not necessarily related to offences against The Highway Traffic Act. While the provision has some built-in conditions (such as the officer must be in uniform and the information furnished must relate to the vehicle) they are not so specifically defined as to render the provision incapable of arbitrary use.

The power to stop and detain a vehicle for the purpose of search should be made conditional on a reasonable belief that the driver has committed an offence or a violation against the statute. The Honourable James C. McRuer's Inquiry on Civil Rights in Ontario advocates this strongly.

> 1. Discretionary powers to stop and detain should be abolished, except in cases involving public safety or public health. In all other cases they should be conditioned on reasonable grounds for belief that the statute in question is being violated.[1]

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[1] McRuer, James C., Royal Commission Inquiry into Civil Rights (Ont.); Report 1, Vol. 1; Queens Printer, 1968, p. 425.

From a statistical point of view, this is the underlying authority or power behind every motor vehicle stoppage in Alberta. No statistics are available regarding the number of cars pulled over by the various enforcement agencies in a year. The task would be gargantuan and would be of little use from an information point of view. In addition, the task of gathering statistical information respecting this section suffers from the same problems encountered with every procedural power. The officer uses the power but does not record the use. To require him to do so would lead to myriads of useless paperwork with its resulting waste of time. Perhaps the only indication of the number of vehicles that are stopped and detained would be the total number of offences recorded against the Highway Traffic Act in Alberta.

Year	Edmonton	Calgary	R.C.M.P.	Total
1969	76,462	43,917	73,099	193,478
1970	81,011	49,521	66,186	196,718

These data do not give a very accurate picture as some of the occurrences were not moving violations. As a result a power to stop and detain was not needed and not used. (In addition, some R.C.M.P. statistics provided: the number of offences against section 184--947 occurrences in 1969 and 1062 occurrences in 1970.)

6. Seizure of License Plates for Equipment Faults

> 187.(4) Where a motor vehicle or trailer is found unfit or unsafe for transportation and is ordered removed from the highway under subsection (2),

> a peace officer may seize the license plates of the motor vehicle or trailer and hold the plates until the motor vehicle or trailer has been placed in a safe condition.

This power falls more within the discretionary realm of the enforcement officer than the license seizures previously mentioned under section 47 of The Highway Traffic Act. When the enforcement officer, either through a routine check or a planned course of action, encounters a motor vehicle which is incapable of being driven properly as a result of its poor mechanical condition, he can seize the plates to prevent its legal movement. The procedure that the City of Calgary police follow is to seize the license plates--so that the driver of the motor vehicle will have to tow it home or to a service station. If he leaves it then they will summon him/her for an abandoned automobile. Under this section the plates are held by police until the condition of the car satisfies them. The section acts as a means of compelling drivers to get their faulty motor vehicles fixed or get them off the road. Without license plates, they cannot legally drive and if they attempt to do so, more serious consequences will result.

As with license plate seizures under section 47, statistics were difficult to obtain. Both municipal police forces were at a loss to provide any data regarding the number of license plates seized under 187(4). The R.C.M.P. provided some data for the last two years: In 1969 there were 37 such seizures and in 1970 there were 44. The procedure does not experience great use because it is inconvenient for both the driver and the enforcement agencies. Methods such as vehicle inspection tags and summons are just as effective

in keeping mechanically imperfect automobiles off the road in most cases. Government testing centers would probably eliminate the need for this provision almost entirely. Perhaps a certificate of mechanical fitness (for certain equipment) should be presented when applying for license plates every year. Such a plan could only have application to cars of a certain age and older, so that the largest body of offenders would be covered.

7. Seize Improperly Parked Vehicle

188.When a vehicle

(a) is left unattended upon a highway in such a manner as to obstruct the normal movement of traffic, or

(b) is illegally parked on any highway, or

(c) is parked so as to prevent access by fire fighting equipment to a fire hydrant, or

(d) is without valid and subsisting license plates or permit, or

(e) is parked on a highway or on private property so as to obstruct any private driveway, or

(f) is left unattended upon a highway and, in the opinion of a peace officer, the vehicle, its contents or any part thereof is liable to be stolen or tampered with,

a peace officer may cause the vehicle to be removed from the highway and taken to and stored in a suitable place, and all costs for the removal and storage are a lien upon the vehicle which may be enforced in the manner provided by *The Possessory Liens Act*

The three enforcement agencies approach this section respecting parked vehicles differently. The two municipalities encounter most of their problems in the areas of illegal parking 188(b), nearness to fire hydrants 188(c) and obstruction of private driveways 188(e). Most of their parking enforcement is handled by means of parking tags or summons (for example, in 1970 in Edmonton alone, there were 224,523 parking meter violations and 79,247 other parking offences). Very few cars are towed away (seized) in comparison with the number of offences and then only in the extreme circumstances.

The R.C.M.P., who police the primary and secondary highways outside of most of the large cities, are not as concerned as much with parking offences per se. They are concerned with the violations that section 188, clauses (a), (b), (d) and (f) cover. Towing is only used as a last resort as it can be very troublesome and expensive if required on a seldom used stretch of road.

The City of Calgary could give no statistics on the number of cars towed away under section 188. Only the number of tags issued for parking offences could be determined (in 1970 - 156,598). Calgary maintains three storage lots for their seized vehicles. Cars seized for parking offences would be towed to lot three where the city charges for towing and storage costs ($2.00 a day). A lien is placed on the vehicle for payment of these by statute. The procedure followed is laid out in section 9 and 10 of The Possessory Liens Act, R.S.A., Chap. 279.

> 9.(1) A person entitled to a lien on any property pursuant to this Act may detain the property in his possession until the amount of his debt has been paid.

(2) If the contract out of which the lien arises provides for the payment of storage charges in respect of the property detained, the person entitled to a lien thereon

(a) may make lawful charges for the storage thereof during the period of the detention, and

(b) may add the amount thereof to his debt.

(3) *If the contract out of which the lien arises relates to any kind of motor vehicle as defined in* The Highway Traffic Act *and if the contract makes no provision for the payment of storage or otherwise, the person entitled to a lien thereon*

(a) may make ordinary and reasonable charges for the storage thereof during the period of detention, and

(b) may add the amount thereof to his debt.

(4) When a bailee has in his possession perishable goods that might deteriorate or be destroyed by detention,

(a) he may forthwith apply to a judge for leave to sell the goods, and

(b) on such application the judge may forthwith give directions for the sale of the goods or may make such order in the matter as to him seems just.

10.(1) If

(a) the debt and storage charges, if any, are unpaid at the expiration of three months in the case of a motor vehicle

and of six months in the case of any other property, from the time when the relation of creditor and debtor arose with respect to the alteration or repair or the bailment of the property, or

(b) the goods and chattels are not taken by the bailor at or before the expiration of the time specified for taking the same in the contract of bailment, or at or before the expiration of the time specified in the notice referred to in section 5,

the lienholder may serve a notice on his debtor by registered mail or personal service.

(2) The notice shall specify

(a) a reasonable time and place for payment of the debt,

(b) the amount owing and the property detained, and

(c) that in default of payment an application will be made to a judge on the day and at the hour and place stated in the notice for leave to sell the goods and chattels.

(3) The day fixed for the application to a judge shall be not less than 30 days after the date of mailing or serving the notice.

(4) If the amount claimed is not paid to the bailee

(a) the bailee may apply on the day and at the hour and place specified in the notice to a judge informally for a sale of the goods and chattels, and

(b) the judge may make such order as to him seems just with respect to the sale and the manner of conducting it.

(5) Unless a judge otherwise directs, it is not necessary to take out an order for sale, but the judge may note informal directions for the sale on the notice or on any affidavit that is used.

(6) If a dispute arises between the bailor and bailee as to the amount due, or in the absence of the bailor, the judge

(a) may fix the amount due in a summary way, or

(b) may direct an action to be brought.

The City of Edmonton could only provide this study with the totals for the number of vehicles towed away for restricted parking. In 1969 this amounted to 2,104 motor vehicles. These seizures increased to 4,342 in 1970. This is probably the result of stricter enforcement and the addition of new restricted parking zones. The R.C.M.P. provided some data respecting the use of this section. They towed away 481 motor vehicles under this authority in 1969. This number increased to 598 in 1970.

Some persons have criticized the lien provisions under this section of the statute (McRuer Report, p. 741). They maintain that it is unfair to subject the owner of a detained vehicle to storage and towing costs plus a fine. However if the government decides that it is necessary to tow cars away for certain infractions, then they must provide the enforcement agencies with a means of collecting the costs of this operation.

8. Seizure of an Abandoned Vehicle

189.(1) Where a peace officer, or a person appointed or designated as a district

engineer by the Minister, on reasonable and probable grounds believes that a vehicle

(a) has been abandoned in contravention of section 157, or

(b) is situated unattended at such location or in such condition as to constitute a present or potential hazard to persons or property,

he may cause the vehicle to be moved from its location, whether private or public property or a highway, and to be stored at what is in his opinion a suitable place therefor in the same judicial district.

(2) All reasonable costs incidental to the removal of a vehicle pursuant to subsection (1) and the storage thereof, for a period not exceeding six months, constitute a debt owing to the Crown by the registered owner of the vehicle or any subsequent purchaser.

(3) The Registrar may, for the purpose of enforcing payment of a debt owed to the Crown pursuant to this section,

(a) refuse to register any motor vehicle in the name of the debtor, or

(b) suspend the registration of all vehicles registered in the name of the debtor,

until the debt is paid in full or, where the vehicle is sold pursuant to subsection (4), until the Crown receives the amount of the removal and storage costs out of the sale proceeds.

(4) Where a vehicle stored pursuant to this section

(a) is not registered in Alberta, or

(b) is not claimed in return for full payment of the removal and storage costs actually paid by the registered owner or someone on his behalf, within 30 days of its removal,

upon the approval in writing of the sheriff of that judicial district the vehicle may be disposed of by public auction or otherwise as the sheriff shall direct, subject to the giving of written notice of the proposed sale to the holders of encumbrances registered in respect of the vehicle at the Motor Vehicle Branch of the Department of Highways and Transport and the proceeds of the sale shall be expended in the following order:

(c) to pay the debt owing to the Crown under this section;

(d) to pay the balance owing on any encumbrances referred to in this section, to the rightful persons;

(e) to pay any remaining portion to the Registrar who shall deposit the amount in the Motor Vehicle Accident Claims Fund established under *The Motor Vehicle Accident Claims Act* whereupon the amount

(i) shall be paid by the Registrar to any person who provides proof satisfactory to the Registrar that the person is entitled thereto if the claim is made and proof thereof is established within one year of the removal of the vehicle under subsection (1), or

(ii) shall constitute a part of the Motor Vehicle Accident Claims Fund if no claim is made and established as provided in subclause (i).

(5) If the proceeds realized from the sale or auction of the abandoned or stored motor

vehicle are not sufficient to cover the costs of removal and storage, the person authorized to remove and store the motor vehicle may apply to the Administrator of *The Motor Vehicle Accident Claims Act* for payment of the outstanding amount and the Administrator, upon being satisfied that the claim is proper, may order payment to be made from the Motor Vehicle Accident Claims Fund subject to the limitations prescribed in the regulations under *The Motor Vehicle Accident Claims Act*.

(6) No liability attaches to a person making the sale of a vehicle pursuant to subsection (4) and the person purchasing the vehicle acquires good title thereto as against the former owner or anyone claiming through him.

(7) In this section "vehicle" includes a wrecked or partially dismantled vehicle or any part of a vehicle.

This section deals primarily with abandoned vehicles. In determining such, the police usually use the 72-hour test (section 157, Highway Traffic Act, c. 169). Under this, any vehicle that is left standing unattended upon a highway for 72 hours is deemed to be abandoned and is liable to seizure. The vehicle may be towed away before that time has elapsed if it violates any of the provisions of section 188 or on "reasonable and probable grounds" the peace officer believes that it is situated in such a condition as to constitute a present or potential hazard to persons or property. This latter authority may appear very discretionary but this discretion is statutorily tempered by "reasonable and probable grounds" instead of relying on the concept that the peace officer or person appointed as a district engineer should have no authority to enter onto private property to seize the vehicle

unless it is an emergency. However, other than in emergency situations, such entry should be conditioned by the use of a search warrant. The problem would be to define the term "emergency situation" broadly enough to cover most situations and specifically enough to protect the individual's private property.

With respect to the 72-hour test, most municipal police forces tag the offending car and if the car is still not moved, within a short period of time thereafter, the motor vehicle is towed away. This disinclination to seize by towing is the result of the limited space available to police agencies for the storage of seized motor vehicles. (For example, Calgary has room for less than 1,000 cars on its three storage lots maintained for seized vehicles. Almost that many vehicles are towed away to the scrap heap every year.)

Statistically, the City of Calgary does not keep any data on the number of abandoned cars seized. This is because this information is of no use to them. Apparently 5,000 cars a year are seized for various offences against the Act. The City of Edmonton was able to provide this study with the number of abandoned cars seized. Similar data were also provided by the R.C.M.P.

Year	Edmonton	R.C.M.P.	Total
1969	460	760	1220
1970	603	897	1500

9. Seizure Under the Arrest Power

192.(1) Every peace officer who on reasonable and probably grounds believes that any of the offences enumerated in section 191 has been committed may seize and detaim any motor vehicle in respect of which the offence has been committed until the final disposition of any proceedings that may be taken under this Act.

(2) A peace officer seizing a motor vehicle purusant to subsection (1) may cause the vehicle to be removed and taken to and stored in a suitable place and cause such tests and examinations thereof to be made as he considers proper.

(3) Except where subsection (4) applies, all costs for the removal and storage of the vehicle are a lien upon the vehicle which may be enforced in the manner provided in *The Possessory Liens Act*.

(4) If proceedings are not taken under this Act within 10 days after the motor vehicle is seized and detained pursuant to subsection (1), the motor vehicle shall be forthwith returned to the owner thereof.

(5) Notwithstanding anything in this section, where a motor vehicle is seized pursuant to subsection (1), any judge having jurisdiction in the place within which the offence is susepcted of having been committed may, in his discretion, release the motor vehicle pending the disposition of any proceedings that may be taken under this Act, if security is given therefor in a sum which shall not exceed $100.

The major seizures made under this authority are those involving traffic accidents and the more serious traffic violators. Many cars are seized, for a short period of time, so that tests and examinations may be carried out on them for the purposes of evidence relating to serious traffic accidents. Offences against section 142 and section 82 would come under this heading. If a suspended driver is apprehended and there is no other qualified person available to drive the car, then the vehicle will be towed away to prevent it from obstructing the highway. The power of detention and seizure should not be allowed in the case of minor infractions such as failure to produce a license or certificate of registration. Only, in the situation where the driver cannot be identified by any conventional means, should the car be detained until the matter is clarified. A general power of detention concerning the vehicle will have to be present to cover circumstances such as an arrest without warrant for an offence against section 191. If the vehicle was left out on a primary highway unattended, chances are extremely good that it will suffer some damage. The application of the provisions of the Possessory Liens Act should be examined in situations such as this where the vehicle was seized pursuant to an arrest with warrant under section 191. This is because the vehicle was detained at the pleasure of the enforcement agencies without any option open to the citizen concerned. Such application in view of the gravity of the procedures might constitute too harsh a penalty.

The City of Calgary could provide no information regarding the use of this section except to say that they maintain one storage lot for seizures as a result of crime and traffic accident violation. The City of Edmonton

provided some data respecting this section. The only problem is that the figure shown represents the number of seizures or towings involving traffic. This is a broad heading and may involve certain other offences; however, it is mainly concerned with seizures for evidencery matters arising out of traffic accidents. Data were also provided by the R.C.M.P.

Year	Edmonton	R.C.M.P.	Total
1969	3233	39	3272
1970	3437	57	3494

The great variance between these two enforcement agencies is probably due to different enforcement practices and municipal situations. It is generally more inconvenient to seize and tow a motor vehicle away on the primary and secondary highways both from the peace officer's and driver's point of view.

III

ARREST

When considering the arrest without warrant provisions of The Highway Traffic Act, we must consider the purpose of the Act, the seriousness of the offence and the enforceability of the statute without provision being made for such arrest. Where an offence can be handled adequately by a summons or voluntary ticket, no provision should be made for an arrest without warrant. According to section 195

of The Highway Traffic Act, any person who contravenes any provision of the Act or regulations is guilty of an offence. In some statutes, this would be an arrestable offence. The Highway Traffic Act has enumerated the twelve violations for which a person can be arrested without a warrant in section 191. This restricts somewhat the scope of the arrest power and lessens the chances of arbitrary use.

1. Arrest Without Warrant

191. Every peace officer who on reasonable and probable grounds believes that any person has committed an offence against any of the provisions of the sections hereinafter enumerated, whether the offence has been committed or not, may arrest such person without warrant and whether such person is guilty or not:

(a) section 42 relating to the exposing of a licence plate other than those authorized;

(b) Part 5 relating to rate of speed of motor vehicles;

(c) section 182 relating to the giving of his name by a pedestrian;

(d) section 46 relating to the defacing of licence plates;

(e) section 143 relating to the driving of motor vehicles in a race or on a bet or wager;

(f) section 160 relating to the defacement of signs;

(g) section 142 relating to driving a motor vehicle on a highway without due care and attention or driving a motor vehicle on a highway without reasonable consideration for the persons using the highway;

(h) section 27 relating to the operation of a motor vehicle without a subsisting certificate of registration;

(i) section 3 relating to the operation of a motor vehicle without having a subsisting driver's licence;

(j) section 82 relating to the duties of a driver at the scene of an accident;

(k) section 184 relating to the requirement that drivers stop when so requested by a peace officer in uniform;

(l) section 153 relating to the tampering with a motor vehicle.

This author had the various enforcement agencies provide him with a breakdown of the number of arrests on a subsection basis. This would aid in the analysis of which violations warrant the arrest power. Arrest, under the statute, performs two primary functions--it ensures the appearnace of the violators before a provincial judge; and it provides a method for removing the dangerous offender from the highway where he can cause injury to person and property.

Section 42 is concerned with the proper vehicle exhibiting the proper license plates. As such, it is performing a regulatory function. If the dirver of the vehicle fails to produce a satisfactory reason for the incongruency and fails to produce any identifications, then he should be detained for a short period until the facts can be varified. Then, he should be issued a summons for the offence. This general approach should be used in respect of violations against sections 46, 160, 18, 27 and 3.

None of the offences are very serious and the arrest power is only needed in the case of a lack of identification. When the offending driver fails to identify himself: (a) by producing a valid driver's license, (b) by producing a valid certificate of registration, (c) by producing a valid financial responsibility card, or (d) by providing other conventional means of identification, to the peace officer's satisfaction then he should be liable to arrest without warrant. The officer has the power to arrest without warrant under the Criminal Code dangerous driving provisions (section 221 CCC) for offences that are now covered by sections 142, 82 and 143 of The Highway Traffic Act. In the same manner, very high levels of speed, in contravention of Part 5 of the Highway Traffic Act, can come under the heading "dangerous driving" and can be handled in the same fashion with respect to arrest without warrant as a failure to identify oneself properly where summons enforcement is impossible. All other serious driving offences can be dealt with in a summary fashion under the provisions of the Criminal Code.[1]

In this fashion, the arrest without warrant power is considerably streamlined and coincide with the regulatory aspect of the statute. "Fallback" sections such as section 183 are eliminated. The police sometimes appear to use this power to apprehend a person who was acting suspiciously around motor vehicles. He may be fumbling for his keys or he may be attempting to steal the vehicle. Using 183 as a fallback section, they can place the suspected person under arrest until they can verify the truth about the situation.

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[1]McRuer, James C, Inquiry into Civil Rights, Report 1, Vol. 2, Queens Printer, 1958, p. 731.

If the police wish such a holding power, then they should state so; and if the legislature deems it necessary, it should legislate in such a manner. The offences such as defacing of signs and defacing of license plates are not serious or prevalent enough to warrant the arrest power--so long as identification is possible, the summons can handle the situation.

Statistically, the Cities of Edmonton and Calgary gave this study a breakdown of the number of arrests under each subsection as far as was possible. Due to a method of compiling data into their computer, the City of Edmonton lumped the number of arrests and summons together until 1970. The input was in the arrest/summons form so that the computer could not give the required breakdown. To obtain the information would have been an impossible task with upwards of 100,000 files to be looked at. The change over to microfilm storage by the City of Edmonton only tended to complicate the problem as it was only partially complete. The City of Calgary provided a complete breakdown for the last two years. The R.C.M.P. did not provide a breakdown--only a figure representing the total number of arrests under section 191 was obtained. These data are presented in the chart on the following page.

There are some difficulties to be kept in mind when these statistics are read: each agency's recording methods are different and the statistics are not necessarily uniform. The statistics are "running statistics" in some cases and this means that not all the arrests and summons are from the particular time period quoted. Thirdly, the arrest statistics include arrests with warrant. However, in the case of offences against

	R.C.M.P.				CITY OF CALGARY POLICE DEPARTMENT				CITY OF EDMONTON POLICE DEPARTMENT				
	Summons		Arrests		Summons		Arrests		Summons		Arrests		
	1969	1970	1969	1970	1969	1970	1969	1970	1969	1970	1969	1970	
NO DRIVER'S LICENSE					761	730	56	46	Arrest/ Summons 494	357		10	
NO CERTIFICATE OF REGISTRATION					226	216	7	10	651	645		2	
DEFACED LICENSE PLATES					NO RECORD				NO RECORD				
FAILURE TO PERFORM DUTIES OF A DRIVER					436	424	28	25	848	616		18	
RACING ON A BET OR WAGER	NOT OBTAINED	NOT OBTAINED			15	18	5	4	NO RECORD				Only Information Obtained: 1969- 6 prosecutions 3 convictions; 1970-12 prosecutions 6 convictions, 6 withdrawals.
TAMPERING WITH VEHICLE					16	21	33	43	30	29		33	
DEFACING SIGNS					NO RECORD				NO RECORD				Only Information Obtained: 1969- 5 prosecutions 5 convictions; 1970- 3 prosecutions 3 convictions.
FAILURE TO STOP FOR POLICE SIGNAL					1492	1783	5	2	30	37		3	
FAILURE TO GIVE NAME BY PEDESTRIAN					NO RECORD				NO RECORD				
CARELESS DRIVING					1925	1796	492	270	1642	1442		20	
UNAUTHORIZED LICENSE PLATES					307	297	21	18	180	212		0	
SPEEDING PART FIVE					19,413	24,534	202	127	19,578	19,897		25	
TOTALS			388	331	24,591	29,819	849	545	23,947	23,235		111	

The Highway Traffic Act, the number of arrests with warrant is minimal in comparison to the number of arrests without warrant. The mammoth task of disentangling them is not justified by the result that could be obtained.

IV

HIGHWAY TRAFFIC ACT RECOMMENDATIONS

1. Summons should not be issued for equipment defects unless they are serious equipment defects. The vehicle inspection tag should suffice to fulfill the purpose of the provisions. Failure to comply with this tag will merit a summons.

2. The provision providing for identification of a pedestrian should be strictly confined to the purposes of the statute. The request should be based on the commission of an offence against the provisions regulating pedestrian traffic.

3. A vehicle inspection under section 187 should be based on reasonable and probable grounds that the vehicle has defective equipment so as to curb indiscriminate and arbitrary detentions.

4. The provision authorizing the entry into and examination of garages (section 194) should be changed to make such entry conditional on reasonable and probable grounds that a contravention of the Act has been committed.

5. Outside of an emergency, judicial authority should be required for entry onto private land so as to facilitate the seizure of improper traffic signs.

6. In the case of a seizure of a domestic animal, the owner should not be assessed costs for the removal, care, feeding and keeping of the animal in addition to his fine. This is a double penalty unless the fine is lessened to accommodate the detention costs.

7. The McRuer Report recommendation on the power to stop and detain a motor vehicle should be adopted. The motor vehicle detention, outside of an emergency, should be made conditional on a reasonable belief that the driver has committed an offence against the Act.

8. The peace officer or individual authorized by section 189 of the Act should obtain judicial approval before he enters onto private property to effect the seizure of the abandoned vehicle unless the situation is an emergency.

9. Arrest without warrant and summons are two ways of compelling the appearance of an offender before a provincial judge. A summons cannot be issued unless the violator can be identified. When the offending driver fails to identify himself: (1) by producing a valid drivers license, (2) by producing a valid certificate of registration, (3) by producing a valid financial responsibility card, or (4) by producing other conventional means of identification to the peace officer's satisfaction, he should be liable to arrest without warrant unless a reasonable cause for his lack of identification is provided.

CHAPTER III

THE LIQUOR CONTROL ACT

The Liquor Control Act is a hybrid of both the regulatory and prohibitive aspects of a statute as illustrated by the stated purpose of the Act in section 3(1). The search provisions are in some cases very broad and arbitrary resulting in a capability for abuse. Statistical information respecting the number and types of searches was available in some cases--in others, the number of violations registered against the Act had to act as the indicator of the use of these powers.

> 3.(1) The purpose and intent of this Act is to prohibit, except under government control as specifically provided by this Act, transactions in liquor taking place wholly within the Province, and each section and provision of this Act shall be construed accordingly.

The above provision prohibits the sale of liquor in the province by any other agencies than those authorized by the government and provides for government regulation of those authorized sales.

1. Board May Inspect Books and Documents of Brewer

> 58.The Board at any time it deems proper may in writing appoint a person or persons to examine all books, documents, vouchers and other papers kept by or in the possession of a brewer in the Province and relating to his business as a brewer.

Section 58 embodies a very powerful and discretionary authority on behalf of The Liquor Control Board. It purports

to give them the power to appoint any individual to inspect all documents relating to a brewer's business. The uncertainty of the person to be appointed and the uncertainty of the time that the documents are to be demanded make this section entirely too arbitrary. Perhaps, it would be better for the person to be specified as to position and the time set on a regular basis except for exceptional situations. However, the section does not encounter much use and its vague terminology is required when outside assistance, in the form of auditors, is used.

The Liquor Control Board does not use the search provisions relating to books and records often. In fact, they are hardly used at all. Since the examinations are so infrequent and irregular, no statistics regarding their use is available. The Board uses the authority as sort of a threat. They request that a certain brewer bring his books in to be examined by the Board. If he refuses, they remind him of their power and authority under this provision. The section has become a convenient means of compelling the production of a brewer's books, vouchers, documents and other papers relating to his business as a brewer before the Board for examination.

2. Agent of Board Permitted Access to any Part of Brewery

> 60.(1) The Board in writing may designate as agents of the Board such employees of the Board as it deems necessary and advisable and may assign to a person so designated the duty of acting as agent of the Board at any brewery or breweries designated by the Board and prescribe the duties of the agent.

(2) A person so designated shall be permitted access to any part of the premises of a brewery to which he is assigned at all times during which the brewery is being operated.

(3) A brewer shall provide for the use of the person designated as the agent at his brewery, such accommodation on the brewery premises and facilities for making and keeping books and records as may be required by the Board.

(4) An agent of the Board

(a) has in respect of a brewery for which he is an agent, all the powers conferred upon a person appointed by the Board under section 58, and

(b) shall be deemed to be a person appointed by the Board under section 58.

This provision provides the Board with a vehicle for close scrutiny of brewery operations in the province. Breweries are not inspected by the inspectors of the Board. This inspection work is carried out by members of the Stocks Department on an irregular, unannounced basis. This may be two or three times a year. In addition, the provincial analyst is hired by the Board to conduct inspections of the brewery product on an unannounced, irregular basis. If deficiencies are discovered, then, the inspectors go in. The Board feels that this power must be there so that they can maintain certain product and health standards. In order to do this, a search provision authorizing inspections and facilities for inspections must be available to the Board and their agents. In multistage inspections, the position of the inspectors cannot be classified except to say employees

of the Board. The inconvenience of biennial or triennial inspections is more than justified by the need to maintain safe product standards in alcoholic beverages offered for public sale.

3. Board Permitted Examination of Distillers' Premises

> 66. The Board may require a distiller or a wine maker to make returns, to permit examination of his books, to permit examination of his distillery or winery and all lands, buildings and other premises used in connection therewith, and to furnish samples, in the same manner and to the same extent as provided in the case of a brewer.

With this provision, the Liquor Control Board can achieve the same close scrutiny over the operations of distillers and winemakers, that they have over the operations of brewers. The power is very broad as we can see. Upon such an examination of a winemaker or distiller, The Liquor Control Board can become acquainted with all the details of his business. Very few other government agencies enjoy this extensive role in private enterprise.

The reasons for this large role are manyfold. The Board is charged with providing the public a safe quality product at a reasonable price. If government influence was not present, many of these standards would decline to the detriment of the public. Enforcement of these standards is generally along the same lines as that concerning breweries. Only one distillery and two wineries in the province are affected. The authority is so broad that it is capable of arbitrary use. This, so far as this author can determine, has not happened. The problem is one of striking a

legislative balance between a specific authority of examination and a general authority broad enough to cover all circumstances.

Again, with respect to documents, they are not seized unless something specific is suspected or their request for documents is refused. The provision is used in cases of lack of cooperation. Aside from rare occasions the co-operation is there (the ALCB is the distiller's only customer) and these powers of search enjoy little use aside from routine examinations and inspections.

The above powers of search (and seizure) involved only one agency--the Liquor Control Board and its agents. The following powers of search involve both the enforcement and administrative agencies.

4. Search Warrant

> 108.(1) Upon information on oath by an inspector appointed under this Act or by a constable that he suspects or believes that liquor is unlawfully kept or had, or kept or had for unlawful purposes, in any building or premises, a justice by warrant under his hand may authorize and empower the inspector or constable or any other person named therein to enter and search the building or premises and each part thereof, and for that purpose to break open any door, lock or fastening of the building or premises or any part thereof or any closet, cupboard, box or other receptable therein that might contain liquor.
>
> (2) A constable who is authorized in writing for the purpose by the Attorney General, if the constable believes that liquor is

> unlawfully kept or had, or kept or had for unlawful purposes, in any building or premises, may without warrant, enter and search the building or premises and each part thereof and for that purpose may break open any door, lock or fastening of the building or premises or any part thereof, or any closet, cupboard, box or other receptable therein which might contain liquor.
>
> (3) The authority referred to in subsection (2) shall be a general one and shall be effective until revoked.
>
> (4) A person being in the building or premises or having charge thereof is guilty of an offence
>
> (a) who refuses or fails to admit an inspector or constable demanding to enter pursuant to this section in the execution of his duty, or
>
> (b) who obstructs or attempts to obstruct the entry of the inspector or constable or any such search by him.

A search warrant should be mandatory for any search of a private dwelling. Liquor Control Board Inspectors, as a matter of policy do not conduct any "searches" other than inspections of licensed premises. When the inspection of another building or premise arises they co-operate with the police.

Subsection (2) of section 108 contains a particularly obnoxious power. It purports to give a constable a "general writ of assistance" under The Liquor Control Act. The authority is all encompassing and does not terminate until revoked. Such writs or authorizations are a serious threat to the individual rights of all citizens. The use of the

authorization is not even conditioned on reasonable and probable grounds. A suspicion or belief on the part of the constable that "liquor is unlawfully kept or had or kept or hand for unlawful purposes" is the condition precedent to the search. At the mere whim of the constable, the citizen can have his door broken down and his house ransacked. The individual has a right to his privacy and freedom from trespass. This is negatived by the belief, not even a reasonable one, of a constable holding such an authorization. No offence against this act justifies the provision of such a power in the hands of the police. This author might understand such strong measures if the nature of the act was strictly prohibitive--but the statute's designed purpose is to regulate liquor consumption. Enforcement agencies argue that they need this authority to apprehend "bootleggers" on Sundays when provincial judges are not readily available. This author maintains that no "bootlegger" is committing a serious enough offence against this statute to place such a broad, discretionary power in the hands of enforcement agencies which is so capable of abuse. If the "bootlegging" problem was so serious as to warrant these tremendous powers, then some positive steps toward the elimination of the problem will have to be taken. One of these could be to open a liquor store 24 hours a day in a downtown location. No person requiring a bottle of liquor will resort to a bootlegger where the product is either of dubious quality and/or exhorbitantly priced when he can get good liquor at a reasonable price from the liquor stores. This suggestion, advocated by several police agencies, would greatly reduce the problem of illegal sales of liquor. In conclusion, while no example of abuse could be found concerning any of the enforcement agencies, the subsection should be repealed. An arbitrary power is capable of arbitrary use.

Data respecting the use of this authorization to search was difficult to obtain. Each one of the enforcement agencies could provide some information, with that provided by the R.C.M.P. being the most complete. The members of R.C.M.P. "K" Division have been issued by the Attorney-General 207 Authorizations to Search under The Liquor Control Act. In 1969 these authorizations were used 220 times. This increased in 1970 to use on 255 occasions. The increase could be attributed to an increase in the number of authorizations issued by this author does not know for sure, as the number of authorizations in force on previous years was not given.

The City of Edmonton Police Department holds thirteen Authorizations to Search under The Liquor Control Act. According to the information that this author received, no close records are kept of their use. For that reason and others, the number of times that they were used was not obtainable.

The City of Calgary Police Department holds 10 Authorizations to Search under the statute. Five of these are held by officers of the morality squad (which does a great deal of Liquor Control Act enforcement) and the other five are held by members of the Juvenile squad. Their use is closely supervised and involves liquor offences on Sundays and "bootlegging". Again no statistics on the number of times that the authorizations were used was available.

In conclusion, this authorization does not appear to be abused. However, it is difficult to see where any liquor offence is so serious as to require the provision of such a broad power in the hands of enforcement agencies. If offences dealing with illegal sales of liquor are increasing, then other means of approaching the problem should be looked

at. Section 108(2) of The Liquor Control Act should be repealed.

5. Search without Warrant

> 110. An inspector appointed under this Act or a constable may without warrant search, if need be by force, for liquor unlawfully kept or had or kept or had for unlawful purposes
>
> (a) in a vehicle, motor car, automobile, vessel, boat, canoe or conveyance of any description, or
>
> (b) on the person of anyone found in a vehicle, motor car, automobile, vessel, boat, canoe or conveyance of any description, or
>
> (c) on the lands in the vicinity of which a vehicle, motor car, automobile, vessel, boat, canoe or conveyance of any description, is searched.

This provision along with section 109 is the general search power under The Liquor Control Act. Section 108 deals with premises and buildings while the above authorizes searches by constables or inspectors of vehicles, persons, and lands in the vicinity of the vehicle search.

Under the present policy of The Liquor Control Board, inspectors are authorized to examine and inspect only licensed premises, distilleries, breweries and the premises of applicants for licenses. Private dwellings and other premises not involved in a business relationship with The Liquor Control Board are not to be searched or (examined) by their inspectors. As a result the word inspector should be deleted from section 108 and 110. The Liquor Control Board administers the Act through

their inspectors and employees; they do not enforce it as the police agencies do. Section 10(25) of the statute implies a right of entry for inspection purposes and fulfills the needs of the Board.

> 10.(1) The Board shall have the following powers to prescribe, subject to this Act and *The Liquor Licensing Act*, and where not otherwise provided in this Act or that Act, the conditions, qualifications and procedure necessary for the obtaining of licences under this Act or *The Liquor Licensing Act* and to determine the books and records to be kept and the returns to be made by the licensees and operators of licensed premises and the number of licensed premises of any class of licence in any municipality, to provide for the inspection and supervision of licensed premises and to regulate and control the conditions under which liquor is to be sold or consumed in such premises;

This provision is made in section 156 of the new regulations relating to The Liquor Control Act:

> 156.(1) Every licensee shall at all times, upon request of any inspector appointed under the Liquor Control Act or upon the request by the Board, admit the inspector or constable or person to all parts of the licensed premises for the purpose of inspecting the same and make a search thereof for the detection of any violation of the provisions of the Liquor Control Act, the Liquor Licensing Act, or the regulations made pursuant to the said Acts.

This regulation may be very broad but it is necessary if the sale of liquor is to be regulated. The only area in which the provision could be strengthened is to require the Board to authorize the person in writing for the purpose and compel

him to produce this authorization at the demand of the licensee.

At the present time, the Liquor Control Board has twenty-five inspectors on staff. These are to act as a liaison between the Board and the licensee. If, during one of their checks the inspectors determine that something is wrong with respect to the premises such as overcrowding, price fixing, and minors on premises, they will inform the licensee of the state of affairs. The inspector then writes a report to the Board detailing the general state of the licensee's business. If similar reports appear again, the first inspector is taken off the job and another inspector whose identity is not immediately known to the licensee will make a check. If his report coincides with the first inspector's report the Board then takes the initiative. They may turn over the reports to the enforcement agencies for action or they may handle the disciplining of the licensee themselves. The inspectors run the following types of checks: annual and regular checks, night checks and operating checks, and special checks. The annual and regular checks are performed by the inspectors of all the licensed premises in the province. Night checks and operating checks are performed in between the annual and regular checks and on a less formal basis--employing some undercover work. Employees of the Board, not necessarily inspectors, do some of this work to ensure that the regulations are being complied with. Again reports are submitted. In addition, checks arising from complaints and applications for licenses are run. These will be on a formal or informal basis depending on the circumstances. (Example: An applicant for one of the new beer and wine licenses will get a very thorough inspection as part of his application.)

LICENSE DEPARTMENT

RECAPITULATION OF ALL INSPECTIONS BY CALENDAR YEAR

	1964	1965	1966	1967	1968	1969	1970
Annual and Regular	3,558	3,705	3,627	2,891	3,625	3,455	3,637
Night Checks and Operating Checks	1,049	1,584	1,364	10,256	8,373	6,858	5,964
Special Checks (Includes: Proposals, Specific Gravity, Brewery, complaints, etc.)	660	915	912	486	587	1,367	1,382
TOTAL	5,267	6,204	5,903	13,633	12,585	11,680	10,983

Inspection services extended province wide; Greater number of checks

Proposals under new regulations

The Liquor Control Board supplied excellent data on the number of checks and inspections run. The figures for 1971 should increase in the annual and regular check category and the special check category. This is due to the provision for new licenses in the regulations. Since most of this work involves the inspectors, the number of night checks and operating checks will decline slightly or remain stable as a result of increased work levels in other fields.

The vast majority of searches under the Liquor Control Act are carried out by the various enforcement agencies. Buildings and other premises, including private dwellings are searched under section 108 of the statute with a search warrant or an Authorization to Search. Section 110 provides these agencies with the authority to search conveyances, persons found in conveyances, and land in the vicinity of the conveyance. The authority is very broad and illustrates the prohibitive aspect of the Act. Constables do not act on a suspicion or a reasonable and probable grounds that an offence against the statute has been committed. They are simply authorized to search for liquor unlawfully kept or had or kept or had for unlawful purposes. This means that a suspicion of an offence is not necessarily a condition precedent to a search. Persons can be subjected to a humiliating search on the mere whim of an officer. Search for liquor might be used as an excuse for an examination of a vehicle for other purposes. Persons should not be subject to searches without a reasonable belief on the part of the enforcement officer that a violation of the statute has occurred. The right to search vehicles, persons and lands should be couched in terms similar to those used in Manitoba's Liquor Control Act (R.S.M. 1970, Ch. L160).

> 248(1) Any constable or inspector who, on reasonable and probable grounds, believes that liquor is unlawfully kept or had, or kept or had for an unlawful purpose, in any vehicle, or on the lands or person of any person, may without warrant search for the liquor wherever he may suspect it to be, and if need be, by force, and may search the person himself, and may seize and remove any liquor found and the vessels and packages in which it is kept; and where liquor is so found, the constable or inspector may arrest the person in charge or apparently in charge of the vehicle, or liquor.

Upon examination of most of the statutes dealing with liquor in Canada, this author finds that a condition precedent of some sort (e.g., believes, reasonable and probable grounds) is usually present.

If the "Authorization to Search" under the Liquor Control Act is repealed, then provision must be made for entry into and search of premises other than private dwellings. Again, a provision similar to section 242(1) of Manitoba's Liquor Control Act (R.S.M. 1970, Chp. L160) might be followed.

> 242(1) Any constable or inspector for the purpose of preventing or detecting the violation of any provision of this Act, may at any time and from time to time, without warrant enter into any and every part of any place, other than a private dwelling house, whether under licence or not, and make searches in every part thereof, and of the premises connected therewith, as he may think necessary for the purpose aforesaid.

This author has some reservations about the above provision, however. It provides for an arbitrary search without a reasonable belief that an offence against the statute has

been committed. This is probably due to the preventive purpose of the section.

In compliance with this author's request, the R.C.M.P. provided this study with some very detailed statistics concerning their enforcement of the statute during the past two years.

Year	Number of Searches without Warrant	Number of Vehicle Searched	Number of Persons Searched
1969	31,036	79,637	24,211
1970	36,039	92,043	37,609

Similar statistics could not be provided by the City of Calgary Police and the City of Edmonton Police. In order to determine some data respecting searches made by these agencies under this statute, we had to resort to a type of deductive reasoning. With most of the offences against the Act such as: Intoxications, illegal possession, sale and keep for sale and illegal conveyance, a search is conducted. This may involve a search of the person or a search of the vehicle or both. This type of reasoning has many flaws as a search and seizure are not involved in every instance, just a majority of instances. However, the data can give some indication of the number of searches and seizures occurring under the municipal enforcement of this statute. These must be viewed with their inadequacies in mind. The statistics below represent a tabulation of the number of offences most commonly registered against the Liquor Control Act that might involve a search and seizure that would fall within section 110 of the Act.

Year	Edmonton	Calgary	Total
1969	6,210	5,864	12,074
1970	5,593	5,256	10,349

No information could be secured on how many searches of buildings and premises without warrant were conducted by these agencies. As a general rule, the members of these forces do not enter a private dwelling without a search warrant except in the case of a serious bootlegging offence where an Authorization to Search is used, if available. The City of Edmonton Police Force does not conduct examinations of licensed premises on a regular basis. The entry onto such premises is conditioned by a complaint or by a request for assistance by the owner or Liquor Control Board. Entry in response to a complaint is usually handled by the Patrol Division. The City of Calgary uses a somewhat different approach. Again, complaints are handled by members of their Patrol Division. The City of Calgary Police Department Morality Squad inspects certain licensed premises in the older part of Calgary on a regular basis. This serves two purposes--(1) detection of wanted criminals, and (2) enforcement of the Liquor Control Act.

II

SEIZURE PROVISIONS

Seizure is an important part of the enforcement function of the Liquor Control Act. Under the various seizure provisions of the statute; books, documents, conveyances and illegally held liquor may be seized in the appropriate circumstances. If not properly handled, these detentions may be of the

greatest inconvenience to the offender. Seizures are usually effected for one of two purposes--to act as evidence in the prosecution of a violator or to act as part of the penalty. The latter of these two purposes results from the provincial judge's order of forfeiture to the Crown. If the judge does not dispense with the seized liquor in his judgment, then the offender may make application to the Liquor Control Board for its return. To ensure the proper handling of a seizure, a property report is made out on any seizure, so both the police and the offender have an idea of what was seized pursuant to the authority granted by the Act. Again, the seizure provisions will be examined individually to gain a better insight of the administrative and enforcement practices behind them.

1. Board May Require Brewer to Furnish Samples

> 62. (1) A brewer licensee shall, as he may be required by the Board, furnish samples of beer that he intends to sell within the Province.

Seizures of samples of beer are not conducted by the Board. They request that the licensee supply samples in such quantities as they deem necessary for testing and examination. These tests are carried out by the provincial analyst for the Board on an irregular basis and by the testing committee of the stocks department. It is in the brewer's best interest to provide the samples on demand as the Liquor Control Board is his sole customer in the province and also the sole licensing agent. If he refuses to submit samples for the analyst's inspection, the Board has the power to suspend his license for the failure to comply with their request. The Board will not market a product unless it has been examined by the

various bodies. This provision is required if the Board is to maintain its close scrutiny over the sale of liquor in the province.

2. Board May Require Distiller and Winemaker to Furnish Samples

> 66. The Board may require a distiller or a wine maker to make returns, to permit examination of his books, to permit examination of his distillery or winery and all lands, buildings and other premises used in connection therewith, and to furnish samples, in the same manner and to the same extent as provided in the case of a brewer.

Section 66 is the application of section 62 to distillers and wine makers. Provision of product samples enables the Liquor Control Board to maintain its watch over the quality of liquor and liquor packaging in the province. Without these provisions, the Board could not perform the duties enumerated below:

> 10(11) to determine the nature, form and capacity of all packages in which liquor is kept or sold under this Act, and the manner in which they are to be closed, fastened or sealed.
>
> 10(3) to enquire into and investigate the desirability of approving for sale or otherwise any product containing alcohol and that is capable of being consumed in liquid or solid form by any person either dissolved or undissolved or diluted or undiluted and to
>
> (i) prohibit its sale, or
>
> (ii) take such measure as may be necessary to control its sale.

No statistics were available on the number of samples submitted for examination by the analyst. Such sampling does not inconvenience the licensee as he is usually the one who wishes to market new products.

3. Liquor Kept in Violation of Section 73 may be Seized

73(1) Except in the case of

(a) liquor imported by the government or by the Board, or

(b) sacramental or other wines used for religious purposes, or

(c) liquor had or kept under section 35, or

(d) liquor had or kept under section 42, subsection (1), clause (c), (d), or (e), or

(e) homemade wine and beer made and used under section 42, subsection (3),

no liquor shall be had or kept by any person unless the package, not including a decanter or other receptacle containing the liquor for immediate consumption, in which the liquor is contained had, while containing that liquor, been sealed by such seal or other means as may be prescribed.

(2) An inspector or constable who finds liquor which in his opinion is had or kept by a person in violation of the provisions of this section may forthwith seize and remove the same and the packages in which the liquor is kept without laying any information or obtaining a warrant.

(3) Upon conviction of a person for a violation of this section the liquor and all packages containing it, in addition to any other penalty prescribed by this Act, shall be forfeited to the Crown in right of the Province.

This provision is designed to deal with the unlicensed manufacturers of liquor in the province and the illegal importation of liquor into the province. Up until the 1950s liquor sold in the province of Alberta had to have a Liquor Control Board seal on it. Now, no such seal is required. It is difficult to determine whether liquor came into this province by means of government or individual importation without such a seal. Therefore, the basic need for this section seems to have disappeared. It could encounter some use in conjunction with bootlegging offences, but this use is minimal. This author found the Liquor Control Board a little dubious as to its function. Perhaps, this section and its function should be evaluated again in the light of current conditions.

4. Constable or Inspector may Seize Liquor found while Making Search of Building or Person

111.(1) Where the inspector or constable in making or attempting to make a search under or pursuant to the authority conferred by section 108 or 110 finds in a building or place or on any person any liquor that in his opinion is unlawfully kept or had, or kept or had for unlawful purposes, contrary to any of the provisions of this Act or *The Liquor Licensing Act*, he may

(a) forthwith seize and remove it and the packages in which it is kept, and

(b) seize and remove any book, paper or thing found in the building or place that in his opinion will afford evidence as to the commission of an offence.

> (2) Upon the conviction of the occupant of the house or place or any other person for keeping the liquor contrary to any of the provisions of this Act or *The Liquor Licensing Act* in such building or place, the justice making the conviction, in and by the conviction, shall declare the liquor and packages or any part thereof to be forfeited to the Crown in right of the Province.

Seizures effected under the authority of this provision are made to secure evidence for prosecution of an offence against the Act. Together with section 112 they form the general seizure power under the Act. As a matter of Liquor Control Board policy, inspectors do not effect any seizures just as they do not apprehend any violators of the statute by means of a summons or an arrest. All enforcement of the Act is left up to the various police agencies. Therefore, the term inspector may be deleted from this section as the Board does not envisage its use.

The liquor that is possessed in violation of this statute or the Liquor Licensing Act is seized as evidence of the offence. This does not work any injustices on the accused. However, the power to seize and remove any book, paper or thing found in the building or place as evidence may be a little strong and arbitrary. The officers in order to determine what book or document is relevant, may have to examine all of the accused's documents and papers. Such an inspection may be very damaging to the accused's business. Wherever possible the books and documents should be examined in their usual place. Certified photocopies should be accepted in evidence.[1] The only documents that should be seized are

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[1]McRuer, James C., Inquiry into Civil Rights; Report No. 1, Volume 1, Queen's Printer, Toronto, 1968, p. 421.

those that are relevant to the offence in question. Hence the statute lacks clarity and is capable of abuse. The decision as to which documents, papers, and things are to be seized is left up to the officer. This is a tremendous power to place in the hands of one man. Whenever possible, the documents to be seized should be specified. The section further states that the documents or things seized must afford, in the officer's opinion, evidence as to the commission of an offence. It does not state whether the offence is an offence against this statute or an offence against other statutes. This oversight must be clarified--so that fishing searches are not conducted under the Liquor Control Act.

Upon conviction of the offender, the judge must forfeit the liquor to the Crown in the right of the province. This is a strong penalty, as the judge has no choice in the matter. It is obviously justified where a bootlegging operation was being maintained in the place, as the illegal liquor should be destroyed not returned to the offender. The absoluteness of the provision, however, may work on hardship on some in special circumstances where the penalty greatly outweighs the offence.

Statistically, the R.C.M.P. again provided the best data. Under section 111 of the Liquor Control Act 3,216 seizures were effected in 1969. The number of forfeitures, closely corresponded to the number of seizures; 3,188 in 1969 and 4,003 in 1970. The slight difference represents: (1) things seized which were not liquor in the case of a conviction, and (2) the things seized in the case of a withdrawal or acquittal. These objects would be returned subsequently.

Again the City of Edmonton and the City of Calgary Police Departments lacked statistics respecting seizures under section 111. Since this provision, along with sections 112 and 113, constitute the general seizure power, most offences against the Liquor Control Act would involve a seizure of liquor under one of them. In the chart below, the figures represent the sum of the more common offences recorded against the Liquor Control Act in Edmonton and Calgary. From these we can imply, with some exactness, a search and seizure. This method has its flaws, as mentioned before, but it is the only vehicle through which the use of seizure provisions by municipal police forces can be illustrated.

Year	Edmonton	Calgary	Total
1969	3953 +2347 intoxications	773 +5091 intoxications	4726 +7438 intoxications
1970	3627 +2052 intoxications	759 +4497 intoxications	4386 +6540 intoxications

The above statistics, as mentioned before, are composite figures attempting to give some indications of the number of times that the seizure power enjoyed use. These data have many flaws. Generally, the offences added to give a total picture were: illegal possession, illegal conveyance, consume in a public place, and sale and keep for sale. Intoxications were not included as they may involve a seizure, if the offender was carrying liquor when apprehended or they may not. Calgary appears to encounter fewer liquor offences than does Edmonton. This may be partially attributed to the difference in population

between the two centers. However, the large variation in number of offences is probably due to the different methods of reading data. Calgary, in its system, records only the most serious offence. For example, a person may be issued a summons for illegal conveyance of liquor (contra section 40 of the Liquor Control Act) in addition to a summons or arrest for careless driving. Under the Calgary system, only the careless driving or dangerous driving charge would be registered. Two additional reasons for the difference may be (1) Calgary's enforcement procedures respecting liquor offences may not be as stringent as those of Edmonton, and (2) Calgarians tend to consume liquor more within the law than do Edmontonians.

Whenever liquor is seized, a property report is made out by the apprehending officer. The liquor is then delivered to the central stores of the enforcement agency where it stays until the provincial judges adjudication. The Liquor Control Board has the power under section 115 of the Act to demand in writing from the constable a report concerning the particulars of the seizure. This is done in the case of a complaint concerning a seizure. Checks like this, tend to curb improper handling of seized liquor. However, they rely on a complaint to get the investigation going.

5. Constable may Seize Liquor Illegally held in a Conveyance and Conveyance

112.(1) Where the inspector or constable in making or attempting to make a search under or pursuant to the authority conferred by section 110 finds in a vehicle, motor car, automobile, vessel, boat, canoe or conveyance of any description, liquor that in his opinion is unlawfully kept or had, or kept or had for unlawful purposes, contrary to any of the provisions of this Act, he may

> forthwith seize the liquor and the packages in which it is contained and the vehicle, motor car, automobile, vessel, boat, canoe or conveyance in which the liquor is found.
>
> (2) Upon the conviction of the occupant or person in charge of the vehicle, motor car, automobile, vessel, boat canoe or conveyance or of any other person for having or keeping the liquor contrary to any of the provisions of this Act in such conveyance, the justice making the conviction, in and by the conviction,
>
> (a) shall declare the liquor or any part thereof so seized and the packages in which it is contained to be forfeited to the Crown in right of the Province, and
>
> (b) may declare the vehicle, motor car, automobile, vessel, boat canoe or conveyance so seized, to be forfeited to the Crown in right of the Province.

This seizure power concerns itself with illegally held liquor found as the result of a search of a conveyance under the authority of section 110(a). Again, a great deal is placed on the constable or inspector's discretion. The word "inspector" should be depleted from the provision as Liquor Control Board inspectors do not carry out inspections of motor vehicles. As a result they do not require the seizure power.

The constable seizes the liquor and the packages for evidence in a prosecution for an offence against the Act. In such an instance, he prepares a property report and places the seized liquor in Central Stores. The power to seize illegally possessed liquor in a motor vehicle should be

available. A driver with open liquor in the vehicle is like a time bomb with a short fuse. Such situations cannot be tolerated, as a large portion of motor vehicle accidents have been caused by drinking drivers. Taking them off the road or defusing them by seizing their liquor are the ways to handle them. However, the liquor should only be seized for the more serious offences. The concept of illegal conveyance of liquor should undergo a change. Liquor should not be classified as illegally conveyed just because it doesn't conform with the provisions of section 40 of the statute. Persons should not be permitted to drive with open liquor in the passenger section of the car--however, sealed liquor should be allowed in the passenger section of the car if it is enclosed in a package or if there is no evidence of drinking. This is outside the scope of my study, but should be looked at.

The seizure of a motor vehicle has never arisen with a strict liquor charge outside of the most serious bootlegging offences where the conveyance is needed as evidence. The more serious bootlegging offences could be handled under the federal Excise Act and this provision is perhaps not needed. It would work a tremendous inconvenience on an individual to have his car seized in conjunction with a minor liquor offence. This seizure-of-conveyance provision is not needed and so rarely used that enforcement officers could not recall its use. As mentioned before, the decision to effect a seizure lies in the hands of the constable. This decision is dependent on his opinion that liquor is unlawfully kept or had, or kept or had for unlawful purposes, contrary to the Act. Such a decision is capable of abuse. The provision should be reworded to base the seizure decision upon a reasonable belief on the part of the constable that liquor is unlawfully kept or had, or kept or had for unlawful purposes contrary to the statute.

The provision also provides for the disposition of the seized liquor and the conveyance. In both instances, the judge has the discretion to order forfeiture. His hands are not tied by an automatic forfeiture under the statute.

Statistically, data were almost non existent on the seizures of liquor discovered through an automobile search. The statistics provided by the R.C.M.P. did not include any data under section 112. Again the City of Edmonton Police Department and the City of Calgary Police Department were unable to supply any data on seizures outside of some composite figures. Generally speaking, if a police officer discovers liquor kept contrary to the provisions of the statute during an automobile search, he will seize it. Some of the statistics representing liquor offences may involve such a seizure under section 112 and some may not. For this reason, the composite statistics are of little value. (See statistical reports for number of liquor offences.) The City of Edmonton maintained one composite figure of some interest here--every year, a certain number of motor vehicles are seized in conjunction with liquor and criminal offences. In 1969, 1,450 motor vehicles were seized under this heading and in 1970 this declined to 1,116 seizures.

6. Seizure of Liquor held in such Quantities as to Satisfy the Constable that an Offence Against the Act has been Committed

113.(1) Where liquor is found by an inspector or constable on any premises or in a place in such quantities as to satisfy the inspector or constable that the liquor is being had or kept contrary to any of the provisions of this Act or *The Liquor Licensing Act*, the inspector or constable may forthwith seize and remove, by force if necessary, any liquor so found and the packages in which the liquor was had or kept.

> (2) Where liquor has been seized by an inspector or constable under any of the provisions of this Act under such circumstances that the inspector or constable is satisfied that the liquor was had or kept contrary to any of the provision of this Act or *The Liquor Licensing Act*, he shall, under the provisions of this section retain it and the packages in which it was had or kept.
>
> (3) If within 30 days from the date of its seizure no person, by notice in writing filed with the Board, claims to be the owner of the liquor, the liquor and all packages shall be delivered to the Board to be dealt with in accordance with subsection (5).
>
> (4) Within 30 days of the seizure of the liquor, but not after, any person claiming to be the owner of the liquor may file with the Board a notice in writing giving at least three days' notice of the time and place fixed by a justice for a hearing to prove his claim and his right under this Act to the possession of the liquor and packages.
>
> (5) On failure by the claimant to prove and establish his claim and right to the satisfaction of the justice, the liquor and packages shall be dealt with in the manner directed by the Board and the packages in which the liquor is kept shall become the property of the Board.

The above provision was specifically designed to handle bootlegging of legally purchased liquor. Again, Liquor Control Board inspectors do not search any place other than licensed premises of some sort. As a result, they do not need a co-ordinate seizure power. Large seizures probably would involve police assistance. If the inspector, in the course of his duties, discovers such quantities of liquor as to

prompt him to believe on reasonable and probable grounds that it is being kept contrary to the provisions of the Act, he should call in police assistance. Otherwise, inspectors might get involved in the enforcement aspect of the statute.

Such a seizure is based on the condition that the constable is satisfied that the liquor is being had or kept contrary to any of the provisions of the Act or Liquor Licensing Act. Again, this is a broad decision capable of abuse. A definition of "in such quantities" is not provided. An over zealous officer could greatly inconvenience an individual with the use of this provision. Its use should be conditioned on reasonable and probable grounds rather than the satisfaction of an officer. The provision also includes a procedure for the return of the liquor invoking judicial scrutiny. As a result, the decision to return the seized liquor is not left in the hands of an administrative board to determine. The only area of criticism, here, would involve the onus on the individual to satisfy the justice that he is the owner of the seized liquor. This may be difficult--and perhaps the onus should be reversed since the whole concept of possession under the statute is not clear.

Statistically, only the R.C.M.P. were able to provide any data on the use of this provision. In 1969, 1,849 seizures were effected under section 113 and in 1970, this increased to 2,041 seizures. The use of the provision appears fairly stable with the slight increase probably due to stricter enforcement. Again, the City of Edmonton and City of Calgary Police Departments were unable to provide any statistics regarding the number of seizures effected during 1969 and 1970. However, this section is primarily concerned with seizures respecting

bootlegging (sale and keep for sale) offences. Therefore, most arrests or summons of individuals for a bootlegging offence against the statute would involve a seizure under section 113. Below, is the number of bootlegging offences reported in both municipalities during 1969 and 1970.

Year	Edmonton	Calgary	Total
1969	71	77	148
1970	104	72	176

Under the particular wording of this provision, the liquor can be seized but the offender does not have to be charged. If the situation warrants a seizure and detention of liquor, then it warrants a charge being laid against the offender. The peace officer then has to think more carefully about a seizure than he would before. If the peace officer is satisfied that the liquor is kept in such quantities as to be kept contrary to any provision of the Act or The Liquor Licensing Act, then he should lay a charge besides effecting a seizure. This would again limit any chances of abuse under the provision.

III

ARREST PROVISIONS

Arrest under The Liquor Control Act is primarily for the purpose of: Compelling the attendance of the accused before a provincial judge and removing the offender before he could cause harm to other persons and property. A summons can be issued for an offence against the statute, but it is not like the traffic ticket authorized under the

Summary Convictions Act, R.S.A. 1970, Chapter 355. Every summons issued for a violation of the provisions of the statute requires a mandatory court appearance. This author thinks that many of the more common offences against the Act are no more serious than some offence against The Highway Traffic Act which are handled by the traffic ticket. Such being the case, a voluntary payment system should be initiated for offences like: illegal possession, illegal conveyance and consumption in a public place. Under such a system the discretion lies with the peace officer as to whether an arrest, a mandatory appearance summons or a voluntary payment summons would handle the situation. Seizures of liquor in conjunction with the offences would have to be effected. Again, the seizure would be more of a prohibitive seizure than a seizure for evidentiary purposes.

If a summons would fail to compel the appearance of the accused before a judge, then an arrest should be made. A summons cannot be issued if the accused fails to identify himself properly.

Arrest statistics were provided by all three enforcement agencies in the province. The number of arrests has greatly decreased over the last few years as section 87 of The Liquor Control Act came into effect. This provision deals with intoxications. Intoxications have long been the leading reason for arrest under the statute. Before the initiation of the following provision, arrest was the only way to handle an individual who was intoxicated. In such a condition, he was a threat to himself and other persons.

> 84.(1) When a police officer or constable finds a person who, in his opinion, is in an intoxicated condition in a public place,

> the police officer or constable may, instead of charging the person under this Act, take the person into custody to be dealt with in accordance with this section.
>
> (2) A person placed in custody pursuant to this section may be released from custody at any time if, in the opinion of the person responsible for his custody,
>
> (a) the person in custody has recovered sufficient capacity that, if released, he is unlikely to cause injury to himself or be a danger, nuisance or disturbance to others, or
>
> (b) a person capable of doing so undertakes to take care of the person in custody upon his release.
>
> (3) A person taken in custody pursuant to this section shall not be held in custody for more than 24 hours after being taken into custody.
>
> (4) No action lies against a police officer or constable or other person for anything done in good faith with respect to the apprehension, custody or release of a person pursuant to this section.

By this means the intoxicated individual is removed from society where he may cause danger to himself and others until he sobers up and is able to look after himself. No longer is he required to appear before a justice just because he is intoxicated. Alcoholism is a social disease, not a criminal offence of any kind. Placing a person in jail is not going to cure an alcoholic. Section 83 is consistent with the belief that alcoholism is a health problem to be dealt with by medical authorities. To drink is not a crime so long as the government itself actively pursues the sale of liquor to the public. Such being the case, is any liquor

offence serious enough to warrant an arrest where a summons can be issued?

The arrest provision is very broad and makes any offence against the Act and regulations, an arrestable offence when read in conjunction with section 93(1) of the Act.

> 93.(1) A person who violates any provision of this Act or the regulations is guilty of an offence under this Act whether otherwise so declared or not.

The McRuer Report[1] severely criticizes the creation of arrestable offences by the Minister or administrative agency concerned. This means that an offence against the regulations should not be an arrestable offence. Only the legislature should have the power to create arrestable offences. Violations against regulations should be completely handled by means of summons.

> 109. A police officer or constable may arrest without warrant a person whom he finds committing any offence under this Act.

This author feels that the arrestable offences should be enumerated as they are under The Highway Traffic Act. This clearly delineates the arrest without warrant offences and lessens the chance of inconvenience toward the individual who has been arrested for a trifling offence. Even with the enumerated offences, the officer should exercise good judgment as to whether arrest or issue a summons. If the

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[1] McRuer, James C., Inquiry into Civil Rights, Report I, Vol. 2, Queen's Printers, Toronto, Ontario, 1968, Page 731.

offender is a transient, a summons will obviously not work. However, if the accused presents no danger to himself, to the community and identifies himself to the satisfaction of the officer, then a summons should be issued. Failure to appear will result in a warrant being issued for his arrest. Some other situations may arise where the two principal criteria for arrest are not applicable, in such a case the officer must use his discretion. This discretion should be tempered by the operational order that wherever and whenever possible, issue a summons.

In the statistical data provided by those enforcement agencies, the same offences seem to repeat themselves. The vast majority of arrests under the Act result from violations of 5 or 6 provisions, namely:

(1) intoxications in a public place,

(2) sale and keep for sale,

(3) illegal possession,

(4) sale to minors,

(5) minors on premises,

(6) disturbance in a bar.

The data respecting these and other violations will be presented in a chart form with each agency represented singularly because of reporting and recording differences.

R.C.M.P.

Section	68	69	72	77	78	82	83	86	87	94(10)	Others
Arrests											
1969	10	6	1	314	36	854	3389	126	176	91	2505
1970	12	8		353	71	911	3628	116	182	53	3782
Summons											
1969	2	22	15	742	100	5475	293	224	162	802	122
1970	10	22	4	726	97	6735	215	171	151	591	160

(For interpretation purposes, the offence that corresponds to the above section numbers is described below:

Section 68 - Sale and keep for sale

Section 69 - Unlawful possession

Section 72 - Sealing of liquor

Section 77 - Sale to minors

Section 78 - Minors on premises

Section 82 - Illegal possession

Section 83 - Intoxicated in a public place

Section 84 - Hold and release

Section 86 - Disturbance on licensed premises

Section 87 - Return to Premises after asked to leave

Section 94(10) - Illegal conveyance

The "others" section includes those detailed overnight under the authority of Section 94.)

The above data clearly indicate that the number of arrests under the Liquor Control Act is clearly rising while the number of summonses are not increasing as quickly. Some of this increase can be attributed to increased population and the addition of new areas of responsibility. Nevertheless, the number of summonses issued should be increasing more quickly than the number of arrests. A change in enforcement policy appears to be indicated although the circumstances in which the R.C.M.P. work are considerably different than those of the other enforcement agencies

City of Calgary

Section	68	77	78	82	83	84	86	Others
Arrest								
1969	78	17	641	827	4075	948	214	10
1970	69	7	416	747*	1122	3318	216	9

*Includes also the number of minors arrested for illegal possession: 394 (1969) and 362 (1970).

In contrast to the R.C.M.P. information, the number of arrests for liquor offences appear to be on the decrease in Calgary. This is in the face of increased population. Some of the decrease might be attributed to enforcement emphasis in other areas, namely, drug offences. Still, this would not appear to explain the overall downward trend although the number of offences against The Liquor Control Act dropped considerably during that period.

Again, the City of Edmonton could only provide one year of data, 1970, where the number of arrests and summons were spearately recorded. Prior to this time, arrests and summons were incorporated into one figure.

Section	68	71	77	78	82	83	84	94(10)	Other
Arrest 1970	78	15	12	30	408	464	1563	51	42
Summons 1970	16	15	31	1110	1863			732	154

Section	68	71	77	78	82	83 84	94(10)	Other
Summons & Arrest 1969	65	75	46	1306	2331	1544	939	339

(These statistics may appear incongruous in some cases, but they are running statistics and are not all the offences registered against a particular provision in a certain time period.)

It is difficult to draw any conclusions about Edmonton's enforcement as only one year's data can be used. However, it would probably follow a trend similar to Calgary's. In most cases, with the exception of the "bootlegging" offences, the number of summonses greatly outnumbers the number of

arrests. Bootlegging is handled differently than other offences because it involves a high proportion of transients and is considered to be the most serious violation under the statute.

The total number of arrests made under The Liquor Control Act in the year 1970 was 16,164. While a provincial statute regulating the sale of liquor in the province affects the majority of Albertans, there should not be as many arrests made as the data indicate. An arrest is the most serious restriction on an individual's freedom and should only be used when all other methods are inoperable. The use of summonses for offences against The Liquor Control Act should be stressed. Arrest should be used for a limited number of violations in circumstances where the offender fails to identify himself or constitutes a danger to himself and/or others.

LIQUOR CONTROL ACT RECOMMENDATIONS

1. A search warrant should be mandatory for any search of a private dwelling made in conjunction with a Liquor Control Act offence.

2. Section 108(2), the Authorization to Search under The Liquor Control Act, should be repealed. The problems that it is designed to combat can be met with more positive actions that do not endanger the rights of the individual.

3. The term inspector should be deleted from the search and seizure provisions (Sections 110 to 113). Under present Board policy, inspectors do not conduct any searches or seizures under these provisions. Under the Act and Regulations they are given powers of search and seizure with respect to licensees and their premises. This is ample for the role that the Liquor Board plays.

4. Searches conducted by enforcement agencies should be conditioned on reasonable and probable grounds that an offence against the Act has been committed.

5. If the Authorization to Search is repealed, then provision must be made for entry into and search of premises other than private dwellings.

6. The Liquor Control Board no longer requires liquor sold in the Province of Alberta to have a Board seal on the bottle. This would seem to eradicate the basic need for section 73. This author feels that this provision and its function should be carefully examined.

7. Wherever possible, books and documents seized under the authority of section 111, should be examined in their usual place. Certified photo-copies of these documents should be accepted in evidence. (The only documents that should be seized are those that are relevant to the offence.) The entire provision should be clarified so that its capabilities for abuse can be limited.

8. The concept of illegally conveying liquor should be looked at to bring it more into line with present day concepts. This would tend to decrease the number of seizures involving liquor in motor vehicles under the authority of section 112.

9. The seizure of a motor vehicle in conjunction with a Liquor Control Act offence should be eliminated. The more serious "bootlegging" offences (where such seizures occur) can be handled by federal statutes.

10. The constable's decision to effect a seizure should be based on reasonable and probable grounds that liquor is unlawfully kept or had, or kept or had for unlawful purposes contrary to the statute.

11. Section 113 should be redrafted so as to leave not as much discretion with the apprehending officer. Ambiguous terms such as "in such quantities" give the section a great capability for arbitrary use. The use of the authority should again be conditioned on reasonable and probable grounds rather than the satisfaction of the officer.

12. If the situation warrants a seizure and detention of liquor under section 113, then it warrants a charge being laid against the offender. As the provision is worded presently a seizure may be affected without a charge being laid.

13. A voluntary payment system should be initiated for the more common, less serious offences against the Liquor Control Act such as: illegal possession, illegal conveyance and consumption in a public place. Under such a system, discretion lies with the peace officer as to whether an arrest, a mandatory appearance summons or a voluntary payment summons will handle the situation.

14. As the Act is read now, an arrestable offence is any offence against the Act or/and regulations. Following the recommendation of the McRuer Report in Ontario, an offence against the regulations should not be an arrestable offence. Only the legislature should have the power to create arrestable offences. Offences against the regulations should be handled by a summons.

15. The offences against the Act which are serious enough to warrant arrest should be enumerated in a similar fashion to such an enumeration under The Highway Traffic Act. This clearly delineates the arrest with warrant offences and lessens the chances of inconvenience toward the individual who has been arrested for a trifling offence. (Except in certain circumstances, arrest without warrant should only be used in the case of a failure to identify oneself; so that a summons is impossible to issue.)

CHAPTER IV

THE WILDLIFE ACT

The Wildlife Act is a piece of new legislation arising out of the old Game Act. It is designed not only to protect the wildlife of Alberta but to provide an annual harvest for the sportsmen and hunters of the province. To accomplish these dual aims, it must have its prohibitive and regulative aspects.

The Wildlife Act is administered and enforced by two agencies. The Fish and Game Branch of the Department of Lands and Forests has an enforcement service spread throughout the province consisting of 62 wildlife officers. Under the auspices of the Fish and Game Branch, further enforcement is provided by game guardians. The game guardians are: all inspection service officers in the province, all provincial parks officers in the province, all provincial parks officers and 40 other assigned individuals. Besides the administrative body's enforcement, the R.C.M.P. are "ex officio" wildlife officers under the Act.

> 6. All members of the Royal Canadian Mounted Police, all Forest officers and all fishery officers
>
> (a) are ex officio wildlife officers, and
>
> (b) have the same powers and duties as are conferred or imposed upon a wildlife officer by law.

The R.C.M.P. also enforce a federal statute covering the same ground in some respects, the Migratory Birds Convention Act. Most of their wildlife enforcement is carried out under this

statute and whenever possible they use it instead of the provincial Wildlife Act. As a result, their information regarding enforcement under these statutes is intermixed. This author was told that an investigation into their information would be practically useless and confusing. Most of the enforcement of this Act is carried out by the Wildlife officers who may, from time to time, assist and receive assistance from the R.C.M.P. The municipal police forces have no part whatsoever in the enforcement of the Wildlife Act and so could provide no data.

Most individuals come into contact with the enforcement of the Wildlife Act during the hunting season when checkpoints are set up at various points in hunting areas. Outisde of these occasions, the Act concerns itself with trappers, furriers, outfitters and illegal hunters. The alien non-resident hunter in his search for more trophies has become one of the leading enforcement problems under the statute. To cover all situations, a powerful Act is required. Some of these provisions can be restricted so as to avoid abuse but maintain the same level of enforcement.

I

SEARCH PROVISIONS

This statute cannot be enforced without search provisions. The officers who try to effect its purpose of protecting the wildlife in the Province of Alberta would find their job impossible if they had no powers of search. Included in the heading "search" are inspections and examinations of the records of trappers, taxidermists and furriers.

1. Production of Records

95. A fur dealer, furrier, taxidermist or tanner licensed under this Act shall upon demand being made by a game guardian or wildlife officer between the hours of 8 o'clock in the morning and 6 o'clock in the evening forthwith produce to such game guardian or wildlife officer

(a) the records that he is required to keep pursuant to this Act or the regulations, and

(b) for the inspection of the game guardian or wildlife officer, all skins and pelts or parts thereof then in his possession.

The records mentioned in the above provision are records that are prescribed by regulation under the statute. Copies of which are available to the Director. They enable the Department to keep track of the number of wild animals killed in the province and their disposition. By this means the Fish and Wildlife Division can maintain an overall picture of the wildlife resource in the province. If the records are not produced on demand, then the officer can get a search warrant or make a search and seizure under section 93. No data were provided on how many demands for production of books were made. Such demands are usually made on a regular basis, perhaps monthly, by wildlife officers on their rounds of inspections. Of course, when something is suspected, the officer will demand the production of the documents or the pelts at an irregular time. If any problems are encountered, the officer has to resort to other means to accomplish his purpose.

Section 95 does not work any unreasonable harm or inconvenience on the individual. The individuals who are

subject to the provision, are licensed under the Act and should expect some inspections and examinations. Without them, the enforcement of the Act is impossible. The records that he is asked to produce are provided by the department and if they are seized for further inspection, provision is made for additional copies [section 78(2)]. The documents are not essential to the running of his business; they are simply records maintained by the individual licensees for the department.

2. Production of License

> 89. A person shall produce and show to a game guardian or wildlife officer his licence or permit when requested to do so by the game guardian or wildlife officer.

The hunting and fishing of our wildlife resources is regulated by the Department of Lands and Forests. One of the major means of enforcing this regulation is done through the licensing of all hunters and fishermen. This provides the department with: revenue and with an accurate count respecting the number of hunters in the field. Through these means they can enforce a reasonable harvest of the resource every year. Again, statistics were not available regarding the number of times that a demand for a license was made. During the hunting season this would amount to the thousands. The wildlife officers and game guardians must have this power if they are to enforce the statute. The right to hunt and fish is no longer an absolute right. The increase in the hunting population combined with the decreases in "open" land and the wildlife resources have resulted in a different concept concerning hunters' "rights". The right to hunt is now a regulated privilege for the benefit of all concerned. This can best be achieved through the use of hunter's licenses.

3. Inspection of Common Carrier Containers

> 72.(1) The agent of a common carrier shall permit any wildlife officer to inspect every bale, box, parcel, package or other receptacle containing the skins or pelts of fur-bearing animals or fur-bearing carnivores on arrival at their destination or in transit.
>
> (2) No such bale, box, parcel, package or other receptacle shall be taken from the premises of such common carrier by a wildlife officer, except as provided by section 93.

The above provision was enacted to allow the wildlife officer to maintain a check on the importation and exportation of illegal skins or pelts. The illegality of the skins or pelts may be the result of: a failure to pay a tax on them, a failure to comply with the Act's provisions respecting the hunting of the wildlife and the treatment of the pelts and skins. No statistics were available on the number of inspections carried out under this provision. They would probably be very limited. However, the officers' actions might be conditioned on the reasonable belief that an offence against the Act had been committed. The way the statute is worded now, the officer has the right to inspect the receptacles on a mere whim at their destination or while in transit. If the provision is enacted so that all common carriers of pelts and skins can be inspected for the purpose of confirming their compliance with the provisions of the Act, then this condition would provide a sensible limitation on the provision and should be considered.

4. Officer's Entry on Private Land in the Performance of his Duty

> 87. A game guardian or wildlife officer may enter upon or pass over any lands whether enclosed or not for the purpose of discharging his duties and while so engaged, he shall be liable only for that damage which he wilfully causes.

The above provision is clearly not a "search provision" but it does give the wildlife officer or game guardian, in the performance of his duty, the right to enter upon the land of an individual without a warrant. So that this power is not abused, the provision contains a condition precedent to its exercise. This is the fact that the officer has entered upon the land for the purpose of discharging his duties. With most land being under private ownership, the officer on pursuit of a violator of the statute, cannot easily miss entering onto private land. His enforcement of the statute would be frustrating, to say the least, if he could not apprehend an offender simply because he cannot enter onto private lands without a warrant. Many landowners encounter problems in the hunting season with persons hunting on their land. They feel that they should be protected against these individuals--this protection can only be secured through the right of entry given to the enforcement officers. The damage provision appears harsh in limiting the liable damage to only that wilfully caused by the officer. This author was informed by the Fish and Game Branch that during the last five years, they have not had a complaint regarding damage to property caused by officers in the performance of their duty. However, for the purposes of clarification, the term "wilfully" should perhaps be replaced by "unnecessarily". Wilful damage is

difficult to determine especially without eyewitnesses. This difficulty may work an injustice against the innocent owner of property.

5. Inspection of Camps

90.A game guardian or wildlife officer

(a) may inspect all camps occupied by a hunter or hunting party, and

(b) may direct what arrangements shall be made with regard to sanitary matters, the disposal of refuse and the extinguishing of fires.

This provision provides the enforcement officer with the power, not necessarily to conduct a search, but to inspect a hunter's camp to ensure compliance with the statute. He need not suspect an offence against the Act irregulations to prompt such an inspection. Rather, it is a part of his procedure to familiarize himself with the number and type of hunting establishments in his area. The directions that he issues are for the general benefit of all hunters in the area and as such are not an unbearable burden on the individual hunter. A detailed search can be carried out under the authority delegated in section 91, if need be. Again no statistics were available as to the use of this power. The officer, in the performance of his inspection duties, undertakes such an inspection of a cursory nature at his discretion. In such cases, statistics are unobtainable.

6. Right of Search without Warrant

91.(1) A game guardian or wildlife officer may, if in uniform or upon production of his badge or certificate of appointment,

> without obtaining a warrant, search any vehicle, boat, canoe, dugout, shed, tent, shelter, packsack, rucksack, or other sack or container, or the pack on any pack horse, if he has reason to believe and does believe that there is concealed therein any illegal wildlife.
>
> (2) A wildlife officer may, if in uniform or upon production of his badge or certificate of appointment, without obtaining a search warrant, search any building or other place and in particular, but without limiting the generality of the foregoing, search any aircraft, vessel, launch or railway car, including a caboose and a baggage or express car, if he has reason to believe and does believe that there is concealed therein any illegal wildlife, or any skin or pelt in respect of which any tax payable pursuant to this Act is unpaid.

Section 91 is the general search power under the statute. Under its authority, the game guardian or wildlife officer can conduct a search of any building, conveyance, shelter and container.

With respect to vehicles, no statistics are kept on the number of times a car is stopped and checked under this authority. In this vein, most vehicles are stopped and checked for loaded firearms. The assistant administrator of the Fish and Wildlife Division, Mr. E. Psikla, estimates that his officers stop over 10,000 cars a year in this respect. If the persons in the vehicles are carrying firearms, there is usually a request to open the trunk and other containers depending on the circumstances. This is where the officer's discretion comes in. His search is conditioned by his belief that there is some concealed wildlife in the motor vehicle. In order to conduct his search the officer must also identify himself either by wearing his uniform or by producing his badge or certificate

of appointment. This is to ensure that no unauthorized person conducts a search using the provisions of this Act.

The section also contains provision for inspection or search of boats, dugouts, packs on pack horses, etc. This is essential to the enforcement of the Act because much of the enforcement is done in the field. It would be virtually impossible to enforce the Act if, on an occasion the department had reason to believe that an outfitter or guide was 30 miles into the mountains on a pack train with illegal wildlife and the officers were forced to secure a warrant before an examination or search could be conducted. In this above example a search warrant could be obtained if the officer was coming in from an urban area to conduct the search. The securing of a warrant by an officer in the field is difficult and if he did not have this power, he would find that it would be virtually impossible to enforce the Wildlife Act in a reasonable way.

The next provision in the Act concerns the search of a building, aircraft, vessels, etc. The authority to search aircraft and vessels is a necessity when the Fish and Game Branch is forced to check hunters in the field who are moving in and out of remote camps by aircraft. One of the greatest problems confronting the Branch is the international trafficking in illegal game. Such a trade involves the use of aircraft and without the authority to search aircraft, the Fish and Game Branch is in no position to exert any control over this illegal traffic. The use of aircraft in hunting is increasing, especially in the more remote areas, and its use can be realistically compared to the use of automobiles in hunting. The same control must be exerted over both types of vehicles.

The right to search buildings is also included in this subsection. This power of search respecting buildings encounters its greatest use in the inspection of remote sawmills and lumber camps. If the officer in the field has reason to believe that the lumber camp operator is serving illegally obtained wildlife to his men, he must have the power to inspect the camp premises, i.e., meatshed. If he does not have this authority, he cannot enforce the statute meaningfully. By the time he secures a search warrant, the operator will have used the illegal wildlife that he had stored in the shed.

Also included in the above "buildings" are private dwellings. The Fish and Game Branch policy respecting the searching of private dwellings is that officers are instructed to conduct such a search under the authority of a search warrant (section 92).

7. Search Warrant

> 92. Upon information on oath by any person who suspects or has reason to believe that there is in any building or premises or in any place or any part thereof any illegal wildlife, a justice by warrant under his hand may authorize and empower any wildlife officer or any other person to enter and search the building, premises or other place and every part thereof, and for that purpose, where the owner or person in charge of such building, premises or other place obstructs or refuses to facilitate the search, to use all necessary force and to break open any door, lock or fastening of the building, premises or other place or any part thereof, or any closet, cupboard, box or any other receptacle therein.

While this is a department policy, it should be made clearer in the statute; i.e., private dwellings should be exempted from the general search without warrant power. This removes part of the provision's capability for abuse.

No statistics were provided respecting the number of searches made under this provision (section 91). Perhaps some indication of its use will be provided by the statistics respecting seizures in the seizure section of this report. As the statute reads now, the officer must condition his search on the belief that any illegal wildlife is concealed by the suspect. Perhaps this belief should be based on reasonable and probable grounds so as to confine the ambit of the officer's discretion but still leave him with reasonable authority to enforce the statute.

II

SEIZURE PROVISIONS

The various detachments of wildlife officers in the province were canvassed by the Fish and Game Branch with respect to obtaining statistics on the seizures under the various provisions of the Act. Since a seizure slip accompanies a seizure made under the authority of the Act, this information could be provided. However, the data secured only covered the period of July 1, 1970, to mid August, 1971. The R.C.M.P., for reasons explained previously, could provide no data. Again, each of the six seizure provisions will be examined individually.

1. Use of Dogs

46.(1) No person shall

(a) use or be accompanied by a dog while hunting big game,

(b) allow a dog to pursue big game.

(2) Any person may at any time without incurring any liability kill a dog found running, pursuing or molesting big game.

(3) Subsections (1) and (2) do not apply in any case where the use of a dog for the hunting of cougar is permitted by the regulations.

While this provision does not involve strictly a seizure, it does involve the retention or detention of another person's property. Under Professor Barker's report, this was classed as a seizure provision and this author shall deal with it as such. Since any individual is authorized under the provision, no statistics are kept regarding its use. The main reason for this provision is to prevent bird dogs from intruding in on nesting birds. If they are unrestrained, much of the nesting population of the province could be destroyed.

2. Unauthorized Traps

65. Where the holder of a certificate of registration of a trap-line discovers any traps or snares other than his own within the limits of his trap-line,

(a) he may remove such traps or snares, and

(b) he shall deliver them to a justice or wildlife officer to be disposed of as set out in section 104.

The above section is designed to deal with the situation where a registered trapper finds snares or traps on his line. These snares or traps on his line are usually set by poachers. The Fish and Game Branch feels that they are dealing with an industry and when a man's livelihood is being affected, he should have the authority to remove traps or snares placed by poachers on his line.

The second clause of the section provides the procedure by which such articles are brought before a court in a prosecution for poaching. The trapper who fails to comply with this clause is in violation of the statute. By this means, the seized snares or traps are accounted for.

Few statistics were available on the number of seizures accomplished under this provision. This is mainly due to the fact that one enforcement agency is not involved in the seizure process. Many individuals are involved and little complied data is kept respecting their seizures, either by themselves or by the department. However, 6 seizures under the authority of this section were effected in the one year period.

3. Seizure of Export Containers

> 71. (5) Every bale, box, parcel, package or other receptacle containing skins or pelts to be transported out of Alberta shall have attached thereto a declaration tag showing the true number of pelts or skins of each species contained therein.
>
> (6) A bale, box, parcel, package or other receptacle found without such declaration tag attached may be seized forthwith.

These provisions are designed to provide authority for seizure of unmarked receptacles or boxes containing furs which are to

be shipped. The section requires that a declaration tag accompany the shipment of furs. By means of the declaration tag, the checking officer has some means of identifying parcels without an internal inspection. If, however, the tag is missing, the officer must have some means of inspecting the shipment. This is essential in the control of the smuggling or illegal transporting of furs. At the present time, the provision is not used too often. If the prices of furs increase, this could be an important section to control the illegal trade that could spring up in such a situation.

The Fish and Game Branch provided a statistic that indicates the small use of this provision. During the one year period, only one seizure under the authority of 71(6) was effected. No abuse appears to be present and the provision plays an essential role in certain circumstances.

4. Seizure of Records

> 78. (1) Where it appears to a game guardian or wildlife officer that a person licensed under section 76
>
> (a) is not keeping the records of all skins, pelts or parts thereof purchased or sold by him as required by the regulations, or
>
> (b) has failed to forward any required statements to the Department at the times and in the manner prescribed by the regulations,
>
> the game guardian or wildlife officer may seize without a warrant and retain the books and records of the licensed person.

(2) A game guardian or wildlife officer who seizes any books or records furnished by the Department shall leave, at the time of making the seizure, with the person whose books or records are seized, a new set of books furnished by the Department.

(3) A person convicted for a contravention of this section shall immediately return to the Department any books or records that have been supplied to him by the Department.

The above provisions refer to those persons licensed under section 76, i.e., holders of a fur dealer's license. These persons are required by the regulations to keep certain records for the Department. The Department requires these records to be kept and provides them to the licensee (copies of these are available to the Director).

According to the Fish and Game Department, not too many records or books have been seized from licensed persons. Where they are seized, it is mainly for evidentiary purposes. For example, in a case where the licensee is altering his records to cover furs illegally taken, the seizure of the record books is a necessary part of the evidence. Most of records seized are those provided by the department. However, they may on occasion place under seizure a cheque stub or a bill of sale. This, as the statistics indicate, is not too common.

The section also provides for a new set of books to be issued to the licensee in the case of a seizure. This is so there will be no break in his business records while he is under investigation. In some circumstances, seizures of

these documents may work an unreasonable harm on the licensee. To prevent this, provision for photocopying of the seized documents should be made in the Act. By this means, the licensee can carry on his business without handicap and the Department can proceed in their investigation with the necessary document.

The Fish and Game Branch provided this author with statistics relating to the number of seizures effected under this provision. In the one year period, seven such seizures were conducted. As mentioned before the section enjoys little use except when the circumstances merit.

Another question to be examined is whether the seizure should be conditioned on reasonable and probable grounds that the records are kept contrary to the Act and/or regulations. Reasonable and probable grounds are not needed as a condition precedent to seizure here. The use of this provision over the last year does not indicate an abusive overuse. The only persons affected are the licensees of the Department. They are required by statute and regulation to keep the documents for the Department and should expect to have them ready for inspection at the request of the Department. In such circumstances the condition precedent, reasonable and probable grounds, is not needed.

5. General Seizure Power

93. (1) Where a game guardian or wildlife officer

(a) finds anywhere, including any building, premises, shack, tent, shelter or vehicle, aircraft, railway car, vessel, boat or

dugout, whether in the possession or control of any person or not, any widllife that he has reason to believe is illegal wildlife, or

(b) finds any vehicle, aircraft, vessel, launch, boat, canoe, firearms, ammunition, decoys, traps, snares, gear, materials or implements or appliances for hunting, trapping or snaring wildlife, that he has reason to believe were illegally held, kept or used for or in connection with the violation of this Act or the regulations,

he may forthwith seize the wildlife, pelts or skins or any parts thereof and the containers in which they are found or the vehicle, aircraft, vessel, launch, boat, canoe, firearms, ammunition, decoys, traps, snares, gear, materials or implements or appliances for hunting, trapping or snaring wildlife, together with any papers, books, documents and records at or in the place, building or premises or upon the person of any person found there or connected therewith, or in the possession or control of such person, that might afford evidence of the commission of an offence under this Act or the regulations.

(2) The game guardian or wildlife officer shall, upon seizing any thing under subsection (1),

(a) give a receipt therefor to the person, if any, having possession or custody of the things, and

(b) furnish the justice with an affidavit

(i) stating that he has reason to believe that an offence has been committed in respect of the things seized, and

(ii) setting out the name of the person, if any, having possession or custody of the things seized at the time they were seized.

The above provision is the general seizure power under the Wildlife Act. As such, its major purpose is to marshall the evidence required in the prosecution of an offence against the Act. The provision is all encompassing and as a result a significant amount of seizures are made every year under its authority. As the provision is now worded, it implies a right of entry. There is no mention made of the search provision, section 91. Only game guardians or wildlife officers can conduct such a seizure. This would include R.C.M.P. officers who are ex officio wildlife officers. However, the only enforcement agency that could provide any data with respect to seizures was the Fish and Game Branch. So as to narrow the section's capability for abuse, the enforcing officer's seizure discretion should be based on a reasonable belief that illegal wildlife in the hands of the suspect or that an offence has been committed against the Act. As the section is worded now, the officer acts if he has a reason to believe that the wildlife is illegally held wildlife or that the suspect has committed an offence against the statute. The question to be answered is whether; "has reason to believe" and "reasonable belief" are different terms expressing the same concept. If such is the case, then the provision is adequately worded as it is now.

This section also makes provision for seizure receipts, and affidavits. With such documentation required, abuse of the seizure power is surely limited. This is a highly recommended provision.

One of the particular situations with respect to seizure that should be mentioned is the seizure of rifles. By far, the greatest number of seizures involve loaded firearms, as

this is probably the greatest single violation against the Act and Regulations. In the case of rifles seized, the Fish and Game Branch has a policy guideline, that all loaded firearms are to be seized when a charge is laid in respect of that offence against the Act. The Branch has a problem, this author was told, in getting some provincial judges to accept the fact that when a charge is laid for a loaded gun in a vehicle, the rifle need not necessarily be introduced and that a description of the firearm and serial number, if available should be sufficient evidence to convict. Some provincial judges insist that a rifle and shells be produced in court before convictions will be made for loaded firearms in vehicles. Still other provincial judges have advised officers not to bring the gun into court suggesting that the officer's summons is sufficient to convict for a loaded firearm in the vehicle. Since the Fish and Game Branch wishes to enforce and administer this statute equally all over the province, they had ordered that all firearms are to be seized in all cases and are to be held until the trial is completed. In this way citizens of Alberta are not treated in a different manner because of a particular judge's opinion on the evidence that must be produced to convict for a firearm violation. This major problem respecting seizures made under the authority of this statute must be cleared up through consultation with all agencies concerned.

The Fish and Game Branch feels that this power is essential to their enforcement of the statute. It provides them with the power to collect evidence necessary for prosecutions against offenders. Without such power, the enforcement of the statute would be totally ineffectual.

Again, the Branch was the only agency to provide this study with data respecting seizures under the statute. This is because they are the major agency involved in its enforcement and administration. In presenting the statistics on seizures, the data were broken down into the major categories of seizures effected under this power.

1.	Number of seizures under the General Seizure Power (+142 illegal birds seized under search warrant effected on taxidermists)	711
2.	Number of containers seized	58
3.	Number of vehicles seized	3*
4.	Number of books and documents seized	9
5.	Number of rifles seized	339

*(Vehicles are only seized by the wildlife officer or game guardian when he is dealing with a case of jack lighting. The vehicle is seized so as to act as evidence in prosecution of this violation of the Act.)

With respect to the seizure of books and documents, a provision should be made for photocopying of all seized records. This way, the suspect is not unduly harmed by the seizure and the Department has the records that it needs.

In conclusion, the seizure power does not appear to be abused. The officer acts only if he has reason to believe that illegal wildlife is present or an offence against the Act has been committed. By this and other means, "unauthorized" seizures are curtailed. Many seizures can be eliminated if the present evidence problem regarding rifles is cleared up to

the satisfaction of all. This provision is essential to the successful prosecution of offenders against the statute. Without such prosecutions, the enforcement would be impossible.

6. Seizure for Unpaid Tax

> 96. (1) Where a wildlife officer finds skins or pelts or parts thereof of any fur-bearing animal or fur-bearing carnivore in respect of which any sum payable pursuant to this Act by way of tax has not been paid, the sum shall be paid forthwith by the person having possession of them upon demand being made therefor by the wildlife officer.
>
> (2) If default is made in the payment of any such sum so demanded, the wildlife officer may forthwith seize any pelt or skin or part thereof in respect of which the sum so payable has not been paid, and take it before a justice.
>
> (3) The person in whose possession the skins or pelts have been found shall submit to the wildlife officer on demand any evidence that he has by way of proof that the tax has been paid in respect of any such skin or pelt or part thereof.

This section makes provision for the payment of any unpaid tax on the skins or pelts of fur-bearing animals or fur-bearing carnivores. Failing payment upon demand of the officer, provision is made for the seizure of the pelts and presentation of such before a justice. The onus lies on the individual to satisfy the officer that the tax has been paid. The demand for such evidence respecting payment usually comes as the result of an inspection by the officer. If the officer did not have the power to seize the skins and pelts in the case of unpaid tax, he would have no evidence to

substantiate his charge in the prosection. (Again, a seizure receipt is issued in the case of a seizure.)

Statistically, only one seizure was made for unpaid tax in the one year period from July 1, 1970, to August 15, 1971. Therefore, while the section enjoys little use, it is essential to a successful prosecution under the Act.

NOTE: The wildlife officers do make some seizures under the authority of The Liquor Control Act. This will be discussed later.

III

ARREST PROVISIONS

88. (1) A wildlife officer may without warrant arrest any person found committing an offence under the provisions of this Act or the regulations.

(2) A game guardian or wildlife officer in the exercise and discharge of his powers and duties is a person employed for the preservation and maintenance of the public peace.

The information regarding the arrest without warrant provision in the statute was again provided by the Fish and Game Division of the Department of Lands and Forests. Under subsection one, according to the Department, arrests are effected only for the more serious offences under the Act such as: possession of a loaded firearm, illegal possession of wildlife, jacklighting, and international traffic in illegal wildlife. (In this conjunction, the Director has a photostatic copy of a price book used in the illegal sale of birds' eggs given by the Fish and Game Branch to this author.) As a general

guide, enforcement officers of the Branch arrest most jacklighters and non-residents committing a serious offence. Jacklighting is perhaps one of the most serious offences against the statute. Its very nature makes the detection and control of the violation difficult. If the department did not have the authority to arrest without warrant alien or non-resident hunters, they could not control these persons involved in hunting infractions. Summonses issued would be ignored once the hunter is out of the department's jurisdiction. With the number of alien and non-resident hunters increasing, the department must have this authority if the statute is not to be ineffective. In Mr. Justice McRuer's Report on Civil Rights[1] in Ontario, he suggested a plan for handling the alien and non-resident violator of his province's Game Act. Simply put, this plan would allow for the collection of part payment on a fine by the apprehending game officer. If the accused answered the summons, the initial payment would be placed toward the fine as assessed by the magistrate or judge. This program has obvious difficulties such as the collection and recording of initial fines--but perhaps should be looked at as an alternative to the arrest of alien and non-resident hunters.

No person is ever arrested for failure to produce a license. If the accused indicates that he has a license, he will be given the opportunity to produce the license at a Fish and Wildlife office. He is issued a normal type of ticket and asked to produce the ticket and license to establish that he did in fact have a license. If there is evidence to

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[1]McRuer, James C.; Inquiry into Civil Rights, Report No. 1, Vol. 2, Queen's Printer, Toronto, Ontario, p. 738.

indicate that the license was purchased after being checked, charges will be prepared. Also, if the person does not produce the license within the required time, charges will be prepared. Again to enforce such a summons against a non-resident is practically impossible, so perhaps the initial payment summons system is a possible answer. The statute and regulations do not provide for a voluntary payment system for summons issued for violations. Such a system should be instituted for minor infractions of the Act and Regulations.

The Fish and Game Branch provided arrest statistics for the year July 1st, 1970, to August 15, 1971. No break-down was given by offence. The statistics represent the total number of arrests made under the Act. In this period 6 arrests were effected under section 88. In addition 22 warnings for failure to produce a license were issued during the same period.

Subsection (2) of section 88 is worded in such a fashion as to give the wildlife officer the same protection and position that a peace officer enjoys under the Criminal Code. It does not, it would appear, give the wildlife officer, the same authority with respect to enforcing the Criminal Code that other peace officers enjoy. Wildlife officers, under the authority of section 27 and section 28 of the Police Act, have been created special constables. In such a position, they can enforce other provincial statutes. In this respect, 34 liquor seizures were effected in the one year period under study. Some of these may have been effected in conjunction with section 29 of the Wildlife Act prohibiting hunting or trapping under the influence of alcohol or narcotics. Some, however, were authorized by the Liquor Control Act.

27. The Lieutenant Governor in Council may

    (a) appoint such special constables as are deemed expedient,

    (b) define the offices, positions, territorial jurisdiction and duties of special constables, and

    (c) make rules and regulations governing the office, position, duties and conduct of special constables and any other matter concerning special constables.

28. The Lieutenant Governor in Council may confer the power to appoint special constables upon the Attorney General and such other person or persons as are deemed necessary.

Wildlife officers maintain that they need this authority to enforce other provincial statutes such as the Liquor Control Act and the Highway Traffic Act. In some of the remoter areas of the province, they are the only representative of law and authority. Peace officers of the R.C.M.P. cannot be reached in time and are not always available to enforce provincial law in these areas. In addition, the R.C.M.P. and wildlife officers work closely on many cases where the experience, knowledge and equipment of the latter are required. This assistance is just not rendered in respect of matters under the Wildlife Act.

On the other hand, the authority to enforce other provincial statutes in the hands of wildlife officers may lead to an over zealous enforcement of these statutes at the expense of the Wildlife Act. These officers' primary purpose is to administer and enforce this statute and its regulations. They are only authorized as special constables

in order that provincial law may be enforced with greater efficiency and scope. This does not mean that the officers are to forsake their primary duties in order to do so. The provincial government must review this situation so that the best compromise can be achieved between the two points of view.

IV

WILDLIFE ACT RECOMMENDATIONS

1. The enforcement officers must have the power to conduct searches and examinations under the Wildlife Act as these powers are essential to the purpose of the statute. The licensing of hunters under the Act is no infringement upon their "right" to hunt. Changed circumstances have required the concept of "the right to hunt" to change to one of a regulated privilege.

2. Section 72, dealing with the inspection of a common carrier's receptacles, bales, boxes, and parcels, by a wildlife officer should be conditioned on obtaining compliance with the provisions of the Act.

3. Section 87, dealing with the right of entry (by an enforcement officer while discharging his duties) onto private land should be classified with respect to damage caused by the officer. The term "wilfully" may be unduly harsh on the landowner from a burden of proof standpoint. This should be perhaps amended to a term along the lines of "unnecessarily".

4. Perhaps the use of the search without warrant provision by the enforcement officer should be conditioned on reasonable and probable grounds instead of the officer's belief that the suspect has concealed wildlife on his premises. This may lead to a clear demarcation of his discretion when deciding to use the power.

5. In conjunction with the procedure for seizure of documents and records, there should be a procedure for photocopying of such, so that both the licensee and the department can carry on their respective business and investigations without harmful restrictions.

6. So as to limit the general seizure sections (section 93) capability for abuse, perhaps the enforcing officer's seizure discretion should be based on a reasonable belief that the suspect has illegal wildlife in his control, or that an offence has been committed against the Act.

7. The confusion over the evidence needed to convict for possession of a loaded firearm in a vehicle should be cleared up with all the agencies concerned. A description of the firearm and the serial number should be sufficient to bring the issue before a provincial judge. One does not compel the presence of a car by means of seizure in every moving traffic violation in issue before the courts. The same logic should be used here with respect to firearms.

8. As an alternative to the arrest of every alien non-resident sportsman found committing offence against the Wildlife Act, perhaps a plan similar to Mr. Justice McRuer's Partial payment plan should be looked at. Despite its administrative and enforcement problems, it might have many benefits over straight arrest in almost all instances.

9. A voluntary payment systems for summons should be instituted for minor infractions against the statute similar to the Traffic Ticket procedure used in conjunction with The Highway Traffic Act.

10. The concept of allowing wildlife officers the authority to enforce other provincial statutes (i.e. Liquor Control Act and Highway Traffic Act) should be examined. The authority to do so may result in an over zealous enforcement of these statutes at the expense of their primary concern: The Wildlife Act.

CHAPTER V

SUMMARY OF RECOMMENDATIONS

I. HIGHWAY TRAFFIC ACT RECOMMENDATIONS

1. Summons should not be issued for equipment defects unless they are serious equipment defects. The vehicle inspection tag should suffice to fulfill the purpose of the provisions. Failure to comply with this tag will merit a summons.

2. The provision providing for identification of a pedestrian should be strictly confined to the purposes of the statute. The request should be based on the commission of an offence against the provisions regulating pedestrian traffic.

3. A vehicle inspection under section 187 should be based on reasonable and probable grounds that the vehicle has defective equipment so as to curb indiscriminate and arbitrary detentions.

4. The provision authorizing the entry into and examination of garages (section 194) should be changed to make such entry conditional on reasonable and probable grounds that a contravention of the Act has been committed.

5. Outside of an emergency, judicial authority should be required for entry onto private land so as to facilitate the seizure of improper traffic signs.

6. In the case of a seizure of a domestic animal, the owner should not be assessed costs for the removal, care, feeding and keeping of the animal in addition to his fine. This is a double penalty unless the fine is lessened to accommodate the detention costs.

7. The McRuer Report recommendation on the power to stop and detain a motor vehicle should be adopted. The motor vehicle detention, outside of an emergency, should be made conditional on a reasonable belief that the driver has committed an offence against the Act.

8. The peace officer or individual authorized by section 189 of the Act should obtain judicial approval before he enters onto private property to effect the seizure of the abandoned vehicle unless the situation is an emergency.

9. Arrest without warrant and summons are two ways of compelling the appearance of an offender before a provincial judge. A summons cannot be issued unless the violator can be identified. When the offending driver fails to identify himself: (1) by producing a valid drivers license, (2) by producing a valid certificate of registration, (3) by producing a valid financial responsibility card, or (4) by producing other conventional means of identification to the peace officer's satisfaction, he should be liable to arrest without warrant unless a reasonable cause for his lack of identification is provided.

II. LIQUOR CONTROL ACT RECOMMENDATIONS

1. A search warrant should be mandatory for any search of a private dwelling made in conjunction with a Liquor Control Act offence.

2. Section 108(2), the Authorization to Search under The Liquor Control Act, should be repealed. The problems that it is designed to combat can be met with more positive actions that do not endanger the rights of the individual.

3. The term inspector should be deleted from the search and seizure provisions (sections 110 to 113). Under present Board policy, inspectors do not conduct any searches or seizures under these provisions. Under the Act and Regulations they are given powers of search and seizure with respect to Licensees and their premises. This is ample for the role that the Liquor Board plays.

4. Searches conducted by enforcement agencies should be conditioned on reasonable and probable grounds that an offence against the Act has been committed.

5. If the Authorization to Search is repealed, then provision must be made for entry into and search of premises other than private dwellings.

6. The Liquor Control Board no longer requires liquor sold in the Province of Alberta to have a Board seal on the bottle. This would seem to eradicate the basic need for section 73. This author feels that this provision and its function should be carefully examined.

7. Wherever possible, books and documents seized under the authority of section 111, should be examined in their usual place. Certified photocopies of these documents should be accepted in evidence. (The only documents that should be seized are those that are relevant to the offence.) The entire provision should be clarified so that its capabilities for abuse can be limited.

8. The concept of illegally conveying liquor should be looked at to bring it more into line with present day concepts. This would tend to decrease the number of seizures involving liquor in motor vehicles under the authority of section 112.

9. The seizure of a motor vehicle in conjunction with a Liquor Control Act offence should be eliminated. The more serious "bootlegging" offences (where such seizures occur) can be handled by federal statutes.

10. The constable's decision to effect a seizure should be based on reasonable and probable grounds that liquor is unlawfully kept or had, or kept or had for unlawful purposes contrary to the statute.

11. Section 113 should be redrafted so as to leave not as much discretion with the apprehending officer. Ambiguous terms such as "in such quantities" give the section a great capability for arbitrary use. The use of the authority should again be conditioned on reasonable and probable grounds rather than the satisfaction of the officer.

12. If the situation warrants a seizure and detention of liquor under section 113, then it warrants a charge being laid against the offender. As the provision is worded presently a seizure may be affected without a charge being laid.

13. A voluntary payment system should be initiated for the more common, less serious offences against the Liquor Control Act such as: illegal possession, illegal conveyance and consumption in a public place. Under such a system discretion lies with the peace officer as to whether an arrest, a mandatory appearance summons or a voluntary payment summons will handle the situation.

14. As the Act is read now, an arrestable offence is any offence against the Act or/and regulations. Following the recommendation of the McRuer Report in Ontario, an offence against the regulations should not be an arrestable offence. Only the legislature should have the power to create arrestable offences. Offences against the regulations should be handled by a summons.

15. The offences against the Act which are serious enough to warrant arrest should be enumerated in a similar fashion to such an enumeration under The Highway Traffic Act. This clearly delineates the arrest with warrant offences and lessens the chances of inconvenience toward the individual who has been arrested for a trifling offence. (Except in certain circumstances, arrest without warrant should only be used in the case of a failure to identify oneself; so that a summons is impossible to issue.)

III. WILDLIFE ACT RECOMMENDATIONS

1. The enforcement officers must have the power to conduct searches and examinations under the Wildlife Act as these powers are essential to the purpose of the statute. The licensing of hunters under the Act is no infringement upon their "right" to hunt. Changed circumstances have required the concept of "the right to hunt" to change to one of a regulated privilege.

2. Section 72, dealing with the inspection of a common carrier's receptacles, bales, boxes and parcels, by a wildlife officer should be conditioned on obtaining compliance with the provisions of the Act.

3. Section 87, dealing with the right of entry (by an enforcement officer while discharging his duties) onto private land should be classified with respect to damage caused by the officer. The term "wilfully" may be unduly harsh on the landowner from a burden of proof standpoint. This should be perhaps amended to a term along the lines of "unnecessarily".

4. Perhaps the use of the search without provision by the enforcement officer should be conditioned on reasonable and probable grounds instead of the officer's belief that the suspect has concealed wildlife on his premises. This may lead to a clear demarcation of his discretion when deciding to use the power.

5. In conjunction with the procedure for seizure of documents and records, there should be a procedure for photocopying of such, so that both the licensee and the department can carry on their respective business and investigations without harmful restrictions.

6. So as to limit the general seizure sections (section 93) capability for abuse, perhaps the enforcing officer's seizure discretion should be based on a reasonable belief that the suspect has illegal wildlife in his control, or that an offence has been committed against the Act.

7. The confusion over the evidence needed to convict for possession of a loaded firearm in a vehicle should be cleared up with all the agencies concerned. A description of the firearm and the serial number should be sufficient to bring the issue before a provincial judge. One does not compel the presence of a car by means of seizure in every moving traffic violation in issue before the courts. The same logic should be used here with respect to firearms

8. As an alternative to the arrest of every alien non-resident sportsman found committing offence against The Wildlife Act, perhaps a plan similar to Mr. Justice McRuer's Partial payment plan should be looked at. Despite its administrative and enforcement problems, it might have many benefits over straight arrest in almost all instances.

9. A voluntary payment system for summons should be instituted for minor infractions against the statute similar to the Traffic Ticket procedure used in conjunction with The Highway Traffic Act.

10. The concept of allowing wildlife officers the authority to enforce other provincial statutes (i.e., Liquor Control Act and Highway Traffic Act) should be examined. The authority to do so may result in an over zealous enforcement of these statutes at the expense of their primary concern: The Wildlife Act.

IV. Chief Recommendation and Conclusion

If the Institute wishes to delve further into this area of study, it should be fully aware of the major pitfalls in in this area which this paper unfortunately highlights. The statistical information respecting searches, seizures and arrests under Alberta statutes is available to the many agencies concerned in a form readily useable by them. This form may or may not be adaptable to the purposes of a study such as this. For example, in many cases--particularly those involving a search, no record of the occurrence is kept at all. This lack of readily available information has led to deductive statistics and "guesstimates"--these usually give a picture or indication--but they are not completely accurate.

This author recommends that the Institute investigate the feasibility of directly obtaining the information desired through co-operation with the agencies concerned over a period of years. The information obtained would then be geared more to the Institute's aims and purposes.

BIBLIOGRAPHY

When this study was commissioned, it was to be of a primary source nature. As a result, very little in the way of bibliographical material was used. In this bibliography, I have decided to divide up the materials used into the various sections.

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Liquor Control Act R.S.A. 1970, Chapter 211.

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Wildife Act

Wildlife Act R.S.A. 1970, Chapter 391

The above bibliography is very skeletal but that is by reason of the nature of the study. Much of the information required was gathered first hand by the agencies involved.

They do not usually gather such and do not keep such information in any collected form outside of Annual Reports. In addition much of the information was secured through interview and personal contact. No actual documentation in the way of books or reports was available or provided. This author has prepared for the institute's files--all the information collected, in the form collected--from this, it is hoped, the Board can further delve into this report for clarification when needed.