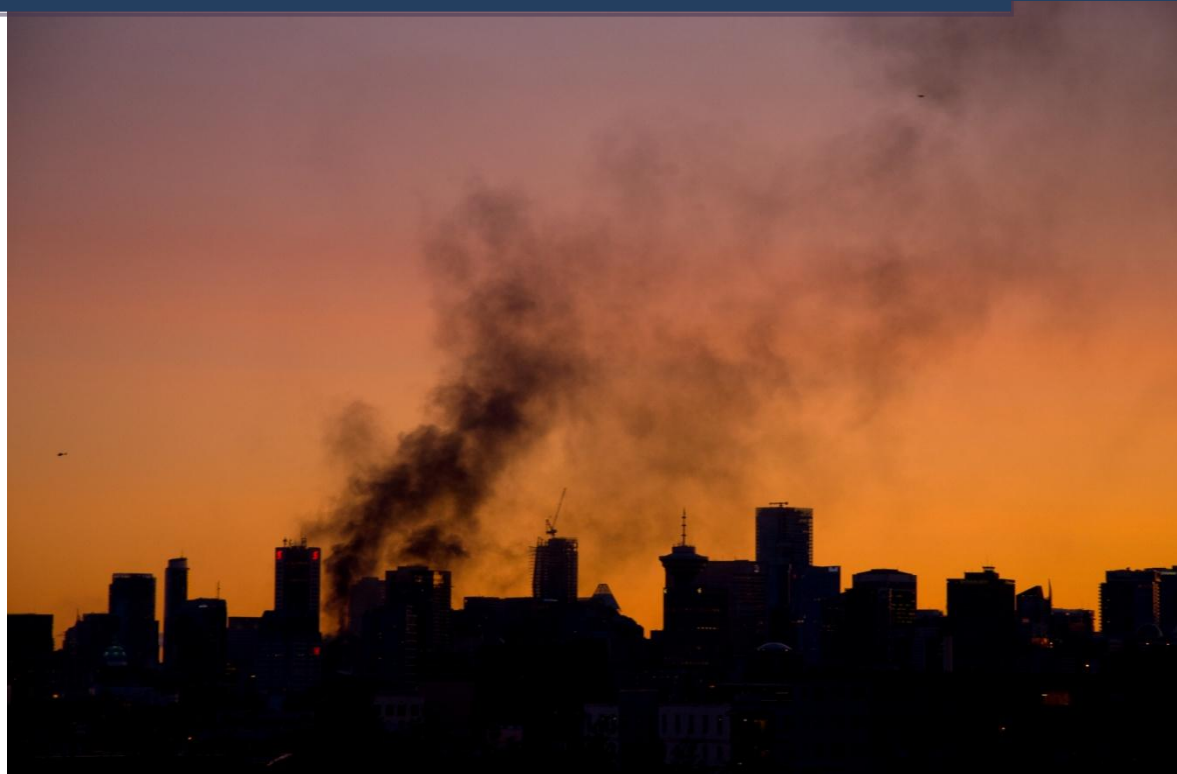


# B.C.'s Prosecution Service – Report on the 2011 Vancouver Stanley Cup Riot Prosecutions



January 2016



Ministry of Justice  
and Attorney General



**CRIMINAL JUSTICE BRANCH**  
*Courageous, Fair and Efficient - A Prosecution  
Service that has the Confidence of the Public.*

Over the past few years, the Branch has sought increased opportunity to provide the public with a better understanding of the role of the Prosecution Service, within the broader justice system. Now that the riot prosecutions are very close to completion, the Branch can offer a behind-the-scenes look at how these cases were marshalled through the criminal justice system – from investigation by police, to charge assessment by Crown Counsel, trial and sentencing. Particular focus has been given to the voluminous digital evidence that underlay the prosecutions, and the effort required by police and prosecutors to ensure that a comprehensive and factually accurate compilation of this evidence was available for each case.



Immediately following the riot in June 2011, there was considerable public dialogue about the manner in which police and B.C.'s Prosecution Service responded to the event. Many questions were posed, including questions about the time it was taking to proceed with charges and prosecutions. The Branch's report answers these questions and provides important context for appreciating the evidentiary and process complexities of the riot cases.

I am proud of the way in which Crown Counsel and the Branch's administrative staff managed the riot prosecutions. Notwithstanding the high-profile and public attention these cases attracted, the Riot Prosecution Team did precisely what is expected of an independent Prosecution Service: they remained impartial; took a fair and principled approach to each case; and, working co-operatively with police, they kept their focus – methodical in their case preparation, steadfast in moving the prosecutions forward, and exercising diligence in the public interest.

In honour of their dedication and professionalism, all members of the Riot Prosecution Team received formal appreciation from the Branch in the spring of 2015. In October 2015, Crown Counsel with the Prosecution Team received national recognition from the Federal/Provincial/Territorial Heads of Prosecution Committee in celebration of their Commitment to Justice.

The public has been well served by the work of the Riot Prosecution Team. On behalf of B.C.'s Prosecution Service, I thank them for their excellence.

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### Introduction

For five hours on June 15, 2011, rioters overtook the downtown core of Vancouver. Moments before the end of the last game in the Stanley Cup finals, when it was apparent the home team would not win, some made the choice to riot. The rioting crowd occupied West Georgia Street and the surrounding areas. The rioters set vehicles on fire, looted commercial premises, and defiantly confronted the police. Numerous police officers and civilians were assaulted. An atmosphere of lawlessness, violence, and destruction quickly consumed the downtown core of Vancouver.

The riot was brought under control by 928 police officers. Their professionalism and restraint was noted by the BC Civil Liberties Association<sup>1</sup> and the courts.<sup>2</sup>

After the riot, police officers began the laborious task of collecting evidence related to the circumstances of the riot and those responsible. The Integrated Riot Investigation Team, (IRIT) was formed to conduct the investigation. IRIT was comprised of police officers from the Vancouver Police Department and seven other Lower Mainland police agencies.

A week after the riot the Criminal Justice Branch (the Branch) established the Riot Prosecution Team (RPT) to manage the riot-related offences that were brought to the Branch by police for charge assessment and prosecution.

The investigation and prosecution of the riot was unique in scope and nature given the:

- large number of rioters;
- large number of alleged criminal acts; and
- copious quantity of photographic evidence (which would become the foundation of the investigation and prosecution).

Media outlets broadcasted live coverage of the riot. In the days following, many videos and photographs taken by the public depicting the riot were posted on social media sites, some even labeling rioters by name. The ability of the public to view the commission of multiple criminal offences during the riot and the outing of many of the rioters by name led to a heightened expectation by the public that the rioters could be easily and quickly apprehended and prosecuted. In fact, the investigation and prosecution of rioters was enormously complex. This tension between public expectations and reality was evident in the media reports which questioned the slow pace of the investigation.<sup>3</sup>

The purpose of this report is to:

- provide an overview of the riot-related prosecution process and the evidence available to the prosecution; and
- provide a better understanding of the mechanics of a prosecution dependent on video and photographs as the foundation of the evidence.



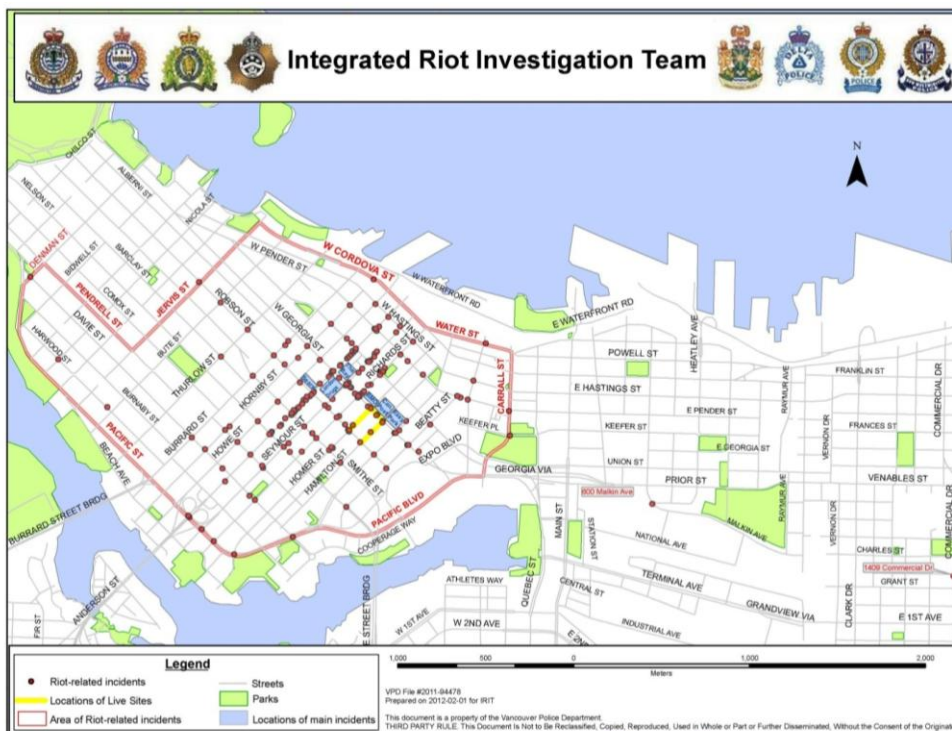
## Location of the Riot

On June 15, 2011, the City of Vancouver set up public viewing areas in the streets of the downtown core for spectators to watch the final game of the Stanley Cup playoff on large television monitors.

Approximately 55,000 people watched the game at a public viewing area on West Georgia Street and an additional 100,000 people were in the streets surrounding the public viewing areas. The television screen was set up on Hamilton Street. This photograph taken at 5:45 p.m. on June 15, 2011, shows the crowd of spectators that had amassed on West Georgia Street from Hamilton to Seymour Streets.



The riot started in front of the Canada Post building, depicted on the right-hand side of the photograph, at approximately 7:30 pm, and spread throughout the downtown core of Vancouver. During the five hours of rioting, members of the crowd committed multiple criminal offences including arson, break and enter, theft, mischief and assault.



This map of the downtown core of Vancouver depicts the three square kilometre area where the riot occurred.

## Scope and Impact of the Riot

During the riot, there were 112 businesses damaged, 122 vehicles were damaged or destroyed, and 52 assaults were reported against civilians, police, and emergency personnel.

On the night of the riot, 1,035 emergency response personnel were deployed to the downtown core of Vancouver:

- 928 police officers, of which 606 were members of the Vancouver Police Department, the remainder were RCMP members or members of other lower mainland municipal police departments;
- 63 members of the Vancouver Fire and Rescue Services and;
- 44 members of the British Columbia Ambulance Service.

The public sought the assistance of these first responders by calling 911 in historic proportion. For example, at one point during the riot there were 92 calls to 911 for Ambulance Services placed on hold.

Half an hour after the riot started, Ambulance Services determined that the area was not safe and relocated all but six of their specially trained members to St. Paul's Hospital. These six members were the only resource available to attend to the over 100 medical emergencies within the riot-zone.

Overnight, St. Paul's Hospital, located in the riot zone, dealt with 250 emergency room visits. In comparison, Vancouver General Hospital dealt with 15 emergency room visits during the same time-period.

The total estimated monetary loss resulting from the riot was approximately \$3.78M. These approximate costs were attributed in the following way:

- \$2.7M to businesses;
- \$540,000 to civilians; and
- \$525,000 to the City of Vancouver, BC Ambulance Services, and St. Paul's Hospital.

The psychological impact of the riot is difficult to quantify as personal experiences varied greatly. Some people were terrified of losing their lives, having barricaded themselves inside businesses for safety, while others defended property or other persons at risk to themselves. The riot stripped a sense of safety and security from many citizens.

## The Investigation

IRIT collected evidence by:

- identifying, interviewing, and taking statements from over 2200 victims, witnesses, property owners, and employees;
- photographing and documenting injuries to assault victims;
- photographing and documenting the damage to buildings, vehicles, and other property;
- obtaining medical records, statements of loss, copies of repair bills, counselling bills, and copies of registration documents; and
- compiling forensic evidence.

IRIT identified 297 discrete riot events. A riot event was defined as an incident relating to:

- a certain location, such as a building;
- a piece of property, such as a motor vehicle; or
- a person, such as a victim of an assault.

These 297 events involved:

- 26 arsons;
- 193 mischiefs (damage to property);
- 26 break and enters; and
- 52 assaults on civilians, police officers and a firefighter.

These 297 events were individually and simultaneously investigated, thus requiring significant police resources. Some of the identified events involved many victims and/or suspected offenders, and were enormously time consuming to investigate, and were classified as major riot events. Three examples of major riot events are London Drugs, Hudson's Bay, and the assault of Mr. Mackay.

#### **Major Event – London Drugs**

A major riot event to commercial premises was committed by 316 individuals who broke into and looted the London Drugs located at 710 Granville Street.

The riot occurred during regular business hours for London Drugs. Employees working at the store closed the store early and locked themselves inside the store for protection against the rioters. Once the rioters broke through the locked doors and steel barricades at the store entrance the employees, fearing for their physical safety, hid in a small windowless office in the basement of the store.

London Drugs suffered extensive damage and financial loss, which included approximately \$140,000 for repairs and \$760,000 in stolen and/or damaged merchandise.

The evidence relating to this single event included:

- witness statements from the employees trapped inside the store;
- 911 calls from the employees, civilians, and a transit police officer relating to the store;
- CCTV video evidence from the interior and exterior of London Drugs;
- witness statements from those who processed and provided the CCTV video to IRIT;
- statement of loss and damage from London Drugs;
- photographs of the damage to exterior and interior of London Drugs;
- statements from those who seized and processed the civilian video and photographs; and
- details of the investigation for each rioter identified, included their IRIT photograph, recognition evidence, arrest, and interview.

#### **Major Event – The Hudson's Bay**

The riot occurred during business hours for the Hudson's Bay department store. Employees closed the store early. The majority of the employees, fearing for their safety, gathered on the top floor of the building. Loss prevention officers stayed on the first floor and attempted, to no avail, to stop the rioters from looting the store. The rioters broke through the locked doors or smashed through windows, entered the store and looted it. Vehicles beside the store were set on fire and the smoke

came through the broken store windows setting off the fire alarms and the sprinkler system. The employees on the top floor believed the building was on fire, and fled from the store into the riot.

The store suffered extensive damage and loss of merchandise as a result of the riot. The financial loss was approximately:

- \$432,000 in stolen property,
- \$856,000 in physical damage to merchandise and the store itself, and
- \$58,000 in other riot related costs (such as trauma counselling for employees).

The evidence gathered against each person suspected in the vandalism to and/or looting of the store included the following:

- witness statements and 911 calls from employees inside the store;
- 911 calls from persons outside the store;
- CCTV video evidence of the exterior and interior of the store;
- witness statements from those who processed and provided CCTV video to IRIT;
- statement of loss and damage for the store;
- photographs of damage to the exterior and interior of the store;
- statements from those who seized and processed the civilian video and photographs; and
- details of the investigation for each rioter identified, included their IRIT photograph, recognition evidence, arrest, and interview.

### **Major Event – Assault of Mr. Mackay**

Another example of a major riot event was the assault of Mr. Mackay. He was swarmed and assaulted by 13 rioters when he attempted to stop rioters from damaging and looting the Hudson's Bay store.

A number of the rioters responsible for the assault also caused damage to the Hudson's Bay and to three cars parked on Seymour Street. The evidence gathered against each suspect in the assault of Mr. Mackay included the following:

- witness statements from Mr. Mackay as to the assault and the impact upon him;
- video and photographs and witness statements from videographers/photographers who recorded the scene before, during and after the assault;
- witness statements from Bay employees and civilians who witnessed Mr. Mackay protecting the store and/or being assaulted;
- witness statements and statements of loss for the three citizens whose vehicles were parked beside the store;
- statement of loss for the damage done to the three cars;
- the material gathered in relation to the Hudson's Bay major riot event; and
- details of the investigation for each individual involved in the swarming, which included their IRIT photograph, tips, follow-up regarding recognition evidence, arrest and interview.

### **Photographic Evidence**

It was essential for IRIT to obtain the available video and photographs of the riot to provide the evidentiary foundation for the prosecution of the rioters. If criminal charges were to be approved and prosecuted, each element of the charged offences, specific to the named accused, would have to be proved beyond a reasonable doubt.



Immediately IRIT was inundated with information from the public. In the first week alone, police received 280 Crime Stoppers tips and 3,692 emails, including:

- 53 emails with attached video;
- 708 emails with attached images;
- 676 emails with links to social media sites; and
- 1,355 emails with hyperlinks to social media sites.

Processing and sourcing the massive amount of video evidence was a monumental task. IRIT obtained the evidence from five sources:

- video and photographs taken by officers from various police agencies that were at the riot;
- video and photographs submitted by witnesses at the riot;
- video from CCTV cameras throughout the downtown core, including external and internal video from businesses and the City of Vancouver;
- video and photographs seized by IRIT from media outlets; and
- video and photographs captured from social media websites.

IRIT investigators were required to verify the authenticity of all the photographic evidence before it could be relied upon in the prosecution. The police had to obtain statements from the approximately 500 businesses and civilians who were originally in possession of this evidence. During the prosecution, there were no legal challenges to the admissibility of the video and photographs because the evidence had been properly authenticated.

Media outlets and freelance videographers were present and recorded the events of the riot. The media agencies refused to provide copies voluntarily of this evidence to the IRIT investigation. IRIT sought judicially authorized Production Orders under the *Criminal Code* to have the media agencies provide copies of all video and photographs in their possession depicting the downtown core of Vancouver leading up to and during the time of the riot. A Judicial Justice of the Peace granted the Production Orders on September 23, 2011. The media agencies then petitioned the Supreme Court of British Columbia to exempt them from complying with the Production Orders and a hearing was held on December 7 and 8, 2011. The Court declined to grant them an exemption<sup>4</sup> and the media agencies provided the material in January 2012.

By the end of the investigation, IRIT had collected 402 video and photo exhibits from 304 sources. These exhibits comprised over 5500 hours of video and over 29,700 photographs, totaling over 30 TB of data, the equivalent to 7,500 DVDs or 45,000 CDs. In comparison, the investigation of the 1994 Stanley Cup riot in Vancouver produced only 100 hours of video evidence.

The 2011 riot occurred over five hours and over a three square kilometer area. Any single rioter could, and many did, commit multiple criminal acts at multiple locations. Evidence of those criminal actions was effectively hidden, like a needle in a haystack, in multiple exhibits taken by various videographers. It would have taken an investigator almost three years simply to view all of the video once.

Therefore, IRIT sought the assistance of the International Law Enforcement and Emergency Services Video Association (LEVA). IRIT took the photographs and video evidence to the LEVA video lab in Indianapolis, Indiana in October 2011. At the time, this was the only video lab in North America with the facilities to review and process this volume of video evidence.

Fifty-one forensic video analysts and investigators worked for over 4,000 hours to process the video at LEVA. By utilizing the resources of LEVA, IRIT was able to process the video in two weeks. If IRIT had not used LEVA, it would have taken approximately 90 weeks to process the video in Vancouver.



Analysts processed the video by “tagging” a suspect depicted committing a criminal offence. The image of the person would be tagged with a description of their personal characteristics and their clothing.

These tags permitted an IRIT investigator to later use a search program, AVID Media Composer, to search the video and photograph exhibits by the personal characteristics and clothing descriptors of a particular riot suspect. The search would return all tagged images matching the description of a particular riot suspect. Through this search process, IRIT investigators were able to uncover the criminal conduct committed by individual suspects without personally reviewing all of the photographic images.

The processing of the video and photographs in LEVA also ensured that evidence of the full conduct of a rioter was located. Some individuals turned themselves into the police shortly after the riot and provided a statement to the police of their conduct during the riot. The processing at LEVA permitted investigators to search all the evidence to ensure the accuracy of these statements. At times the search produced evidence showing that an individual's self-reported account was inaccurate, and in fact the individual was much more seriously involved.

### **The Riot Website**

IRIT created a website for the public to assist in the identification of rioters. IRIT posted photographs and video stills of suspected rioters on the website. Each suspect was given a unique IRIT identification number. The public could view these images and post information to assist in the identification of a suspected rioter. This information could only be accessed by the police. The public could provide the information anonymously or leave contact information, which allowed an investigator to follow up with the tipster as a potential recognition witness.

A recognition witness is a person who is able to look at a video or photograph and recognize the person in the video or photograph. A recognition witness is considered a reliable witness if there has been a close and/or lengthy relationship with that person.

The first website posting on August 30, 2011 contained photographs of 40 suspected rioters. This number was chosen in order to manage the volume of anticipated tips and information that would follow. Within three days of the launch of the website it received over 100,000 visits and over 225 tips.

New suspect images continued to be added to the website throughout the investigation. In total, more than 1,500 suspect names were provided to IRIT via email, telephone, and the website. As many of the tips were from anonymous sources or from individuals unwilling to be witnesses, IRIT investigators were required to follow up on the tips in order to find reliable recognition witnesses. Locating and interviewing prospective recognition witnesses was a necessary and time-consuming part of the investigation. Over the course of the investigation, IRIT obtained more than 1000 statements from recognition witnesses.

## **The Prosecution**

### **Establishing the Riot Prosecution Team**

A week after the riot, the Branch established the RPT to manage the riot related prosecutions. In all major prosecutions, there is a lawyer who is the team lead to oversee the administrative and legal decisions of the team. The team was initially composed of a team lead, three other lawyers and one administrative assistant, all of whom had experience prosecuting major files. The team composition

increased by an additional three lawyers and two administrative assistants when the accused numbered in the hundreds.

The team was aware that they would be reviewing hundreds of investigative reports, each involving a voluminous amount of evidence. From the outset, the team focused on developing consistency in their approach to all facets of the prosecution. All accused, no matter when they were charged or which Crown Counsel had conduct of the file, had to be treated fairly and consistently at all stages of the prosecution process.

The Branch received additional funding due to the extraordinary costs associated with these prosecutions. The following table shows the financial costs of prosecuting the riot-related files.

Expense	2011/12	2012/13	2013/14	2014/15	2015/16*	Total
Staffing	515,271	1,244,082	1,399,513	1,126,751	520,149	4,805,766
Other**	16,695	61,489	47,110	36,289	9,416	170,699
Total Expenditures	<b>531,966</b>	<b>1,305,571</b>	<b>1,446,623</b>	<b>1,163,040</b>	<b>529,565</b>	<b>4,976,765</b>

\* Forecast

\*\* Including witnesses, travel, transcripts, cellular phones, office expenses, building charges, and Law Society fees.

### Preparation for Riot Prosecutions

Between June and October 2011, before the police submitted any investigative reports, the RPT took steps to ensure a consistent approach to all riot-related files, and to ensure the justice system was prepared for the large number of expected prosecutions.

During this period, the RPT met with other justice system participants for the purpose of ensuring that proper resources were in place for the riot prosecution files that would soon be entering the system. The RPT held discussions with Court Services Branch regarding the technology required to present the photographic evidence in court. Discussions were also held with administrative judges and legal aid officials regarding the expected influx of new files to the court system. Corrections Branch was consulted about a potential increase in the number of offenders requiring supervision by probation officers of court-ordered community work service.

RPT prepared for the consistent prosecution of alleged rioters by:

- Organizing the intake, management, and tracking of all investigative reports and prosecution files.
- Developing a master spreadsheet in order to (amongst other things) provide all RPT members access to:
  - file data;
  - file assignments;
  - case outcomes and sentencing details; and
  - information required to answer the many external and internal inquiries.
- Reviewing case law and preparing summaries of the law regarding:
  - the legal test for the charge of riot;
  - the admissibility of photographic evidence;

- the admissibility of recognition evidence;
- the admissibility of statements for both adults and youths; and
- the legal considerations for riot sentencing hearings.
- Organizing a consistent approach to charge assessment, composition of the Information (charging document) and prosecution files generally.
- Developing a consistent approach to bail. Generally, accused who did not have a criminal record were arrested on an endorsed warrant, which permitted the accused to be released on conditions by the Officer in Charge, and an opportunity was provided to these accused persons to surrender voluntarily to the police.
- Acquiring the equipment and software required to review and organize the photographic evidence.

## Charge Assessment

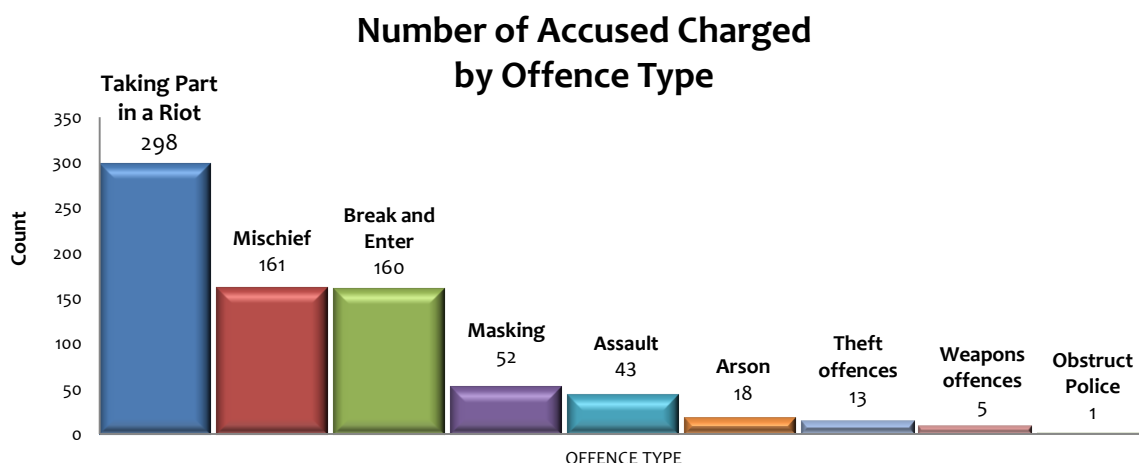
Under the *Crown Counsel Act*, Crown Counsel are responsible for charge assessment (the decision of whether or not a person will be charged with a criminal offence). Once IRIT completed the investigation of a particular riot suspect, it presented the evidence against that person in a Report to Crown Counsel (RCC) and forwarded the RCC to the Riot Prosecution Team for charge assessment. The RCC was reviewed in accordance with the Branch's policy on charge assessment, which requires that:

- there be a substantial likelihood of conviction; and
- a prosecution is required in the public interest.

The charge assessment guidelines are established in Branch policy and are available online at: [www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1\\_ChargeAssessmentGuidelines.pdf](http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1_ChargeAssessmentGuidelines.pdf)

The police submitted the first group of RCCs to the RPT on October 31, 2011. The first charges were laid on November 30, 2011 against both adult and youth accused. If an accused was between the ages of 12 and 17 on the date of the riot, the prosecution proceeded in youth justice court.

Between October 31, 2011 and July 24, 2014, the RPT assessed RCCs in relation to 366 suspected rioters. Ultimately, 912 charges were laid against 300 alleged rioters. In total, 246 adults and 54 youths were charged. The following graph shows the number of accused that were charged with various offences.<sup>5</sup>



## Court Proceedings

An accused has the right to obtain legal counsel and to receive full disclosure of all relevant evidence in the possession of the Crown. The RPT provided a disclosure package to defence counsel at the first court appearance in arraignment court, which included all of the evidence contained within the RCC. The RCC included an overview of the riot; the particulars of the accused's participation in the riot, including the photographic evidence of that participation; and, statements from recognition witnesses, victims, and police officers as relevant to that accused. The accused had the choice of pleading guilty, or having a trial. The accused and defence counsel needed time to review and discuss the often-voluminous disclosure. Therefore, the matter would be adjourned until the disclosure was properly reviewed and a decision had been made by the accused whether to plead guilty or have a trial.

Over the course of the prosecution, the RPT was simultaneously conducting charge assessment, attending initial court appearances, arraignment hearings, trials, and sentencing hearings.

In the end, 284 accused pleaded guilty, 10 accused chose to go to trial (9 were convicted), and the Crown entered a stay of proceedings, terminating the prosecution, against six accused because the Branch's charge assessment standard was no longer met. Over 500 court days were required to complete the trials and sentencing hearings.<sup>6</sup>

## Presentation of Photographic Evidence

Photographic images of an event are admissible as evidence to establish whether a crime has been committed and whether the accused committed it. Through the tumultuous events of June 15, 2011, cameras recorded the actions of those participating in the riot. These actions were not caught on one continuous video, but rather on many smaller clips of the various riot events from different videographers and photographers. The various video and photographs were not focused on a particular rioter's conduct but contained multiple rioters committing many criminal acts at the same time.

It is the role of Crown Counsel to present relevant evidence upon which a judge can make findings of fact. The most relevant evidence in the riot prosecution was the photographic evidence. All of the available photographic evidence against a particular accused had to be assembled into a coherent and cogent exhibit. For every trial and sentencing hearing, the video and photographs were organized chronologically to depict the conduct of a specific rioter within the context of the riot as a whole.

A judge might review the photographic evidence outside of court as part of his or her deliberations on verdict or sentence. Crown Counsel also provided the judge with a written summary of the photographic evidence to assist the judge in locating the accused amongst all of the other individuals in the photographic evidence.

The process of organizing the various pieces of photographic evidence into an exhibit and preparing a written summary of that evidence was a labour intensive job. The Crown reviewed all of the evidence and selected the relevant photographic evidence. A list of the selected evidence would be provided to administrative staff that cut the video and photographs and electronically copied them onto a disc, which became the exhibit. The process of organizing all of the photographic evidence for the trials and sentencing hearing required thousands of hours of work by RPT but resulted in effective and efficient use of court time.



For example, during one trial the Crown alleged that two accused traveled through eight separate areas of the riot committing numerous criminal offences over the course of three hours. The photographic evidence consisted of 90 series of photographs or video clips. In preparation for trial, it initially took the Crown five days to merely watch this photographic evidence. By organizing and summarizing the evidence, the Crown was able to present the same evidence in court in half the time.

The vast majority of the riot-related accused pleaded guilty due to the organized and compelling Crown case, in particular the photographic evidence. The countless hours spent by the RPT organizing this evidence (and by the police in carefully gathering and cataloguing this evidence) resulted in great savings in court time.

## **Trials**

Many accused initially set their matters for trial but the majority of the accused ended up pleading guilty before the end of trial. There were six trials, involving ten adults, which went to completion. All of these trials also involved allegations of other offences apart from riot. The other charges included allegations of:

- assaulting a police officer;
- assaulting a firefighter;
- assaulting civilians;
- break and enter; and
- mischief to property.

The legal issues at the trials for the 10 accused varied at each trial. The issues included:

- whether the accused intended to participate in the riot;
- whether the defences of self-defence or defence of a third party or use of force to prevent the commission of an offence were available to an accused;
- whether pre-charge delay or police conduct warranted a judicial stay of proceedings;
- whether recognition witnesses' evidence was admissible; and,
- whether the identification of the accused from the photographs and video presented at trial had been established.

In order to establish the conduct of the various accused, the Crown relied on evidence from:

- witnesses as to the events of the riot; and
- video and photographs of the events of the riot.

Nine of the ten accused were convicted and one accused was acquitted.

## **Sentencing Hearings**

Adults are sentenced pursuant to the principles of sentencing as established by Parliament in the *Criminal Code*. General deterrence and denunciation are, in most circumstances, given paramount consideration in sentencing an adult rioter.

Youth, however, are sentenced pursuant to principles contained in the *Youth Criminal Justice Act* (YCJA), which did not at the time of the riot include general deterrence as a principle. The YCJA

recognizes that youth are less morally blameworthy for their conduct as their sense of moral responsibility is not fully developed. Therefore, the YCJA emphasizes the need to have youth accept responsibility for their offence and for the court to craft a sentence focused on rehabilitation. The youth court can only impose a jail sentence in narrow circumstances.

In imposing sentence, the court weighs the personal circumstances of the offender, the aggravating and mitigating factors, and the decisions made by other Canadian courts for similar offences.

The sentences ultimately imposed by the courts in relation to the adult and youth rioters reflect the differences in the applicable sentencing principles, as well as the individualized process of sentencing. It is a multi-faceted analysis, with no two cases ever being exactly alike, even when committed during the same event such as this riot.

During the sentencing hearings, Crown Counsel provided the court with:

- written Admissions or Submissions of Fact outlining the riot in general and the offender's participation in particular;
- the video and photographs that depicted the offender's participation in the riot;
- the victim impact statements relevant to the offender's participation in the riot; and
- case law in relation to the sentencing principles for a riot offender.

Throughout the sentencing hearings, the judges recognized the seriousness of the offence of rioting and the seriousness of this riot in particular.

In *Regina v Patillo*, the Court stated:<sup>7</sup>

Why is this offence considered to be so serious? During a riot, the rule of law is suspended by virtue of the actions of the rioters. Citizens nearby and further afield cannot feel, and indeed are not, physically safe. The extraordinary call on emergency services of all kinds can result in there being no assistance available for anyone else in the community. Property of all sorts, locked and secured in the ordinary way, is not safe from the crowd. By sheer force of numbers, the rioters can break through any security device and loot and destroy at will.

Participation in a riot includes a vast range of behaviours. A riot will only end when those involved do what they should have done in the first place: stop and leave the area. As long as there are observers, who by their very presence are encouraging the destruction, people watching, sometimes cheering, and frequently taking photographs, the riot will continue.

The Court in *Regina v Fuller* said this at paragraphs 49 through 51:

One has to bear in mind that the only purpose of those rioters (mostly from 16 to 25 years old, the accused being 22) was the pleasure of destroying, terrorizing and putting fear into those who did not want to be part of the riot in the first place. Violence and mob rule replaced peaceful government (to paraphrase the judge in the *Loewen* case). There lies the gravity of the crimes committed by the accused.

In *Regina v Yates* the Court stated:<sup>8</sup>

I wish to comment on two things. First, although I have only been presented with short excerpts of the videos of the riot, it is an enormous understatement to describe the scene of mayhem and gross public disorder as shocking. The crowd was composed almost entirely of

young men and women, like Mr. Yates, who seemed to have completely lost sight of who they were, who the police were, and that they were destroying the community and the neighbourhood of downtown Vancouver.

Second, it was enormously disturbing to see the crowd's behaviour towards the Vancouver City Police. In all of the scenes I viewed, the police were acting with the utmost restraint. I can only imagine how terrifying it must have been for them to be confronted by such an enormous, howling mob of drunken young people. It would have taken considerable courage for all of the police, firefighters, and other emergency personnel to stand up to that malevolent crowd. Their conduct is a tribute to the high degree of their professionalism, for which the entire City of Vancouver, and particularly the rioters themselves, should be grateful.

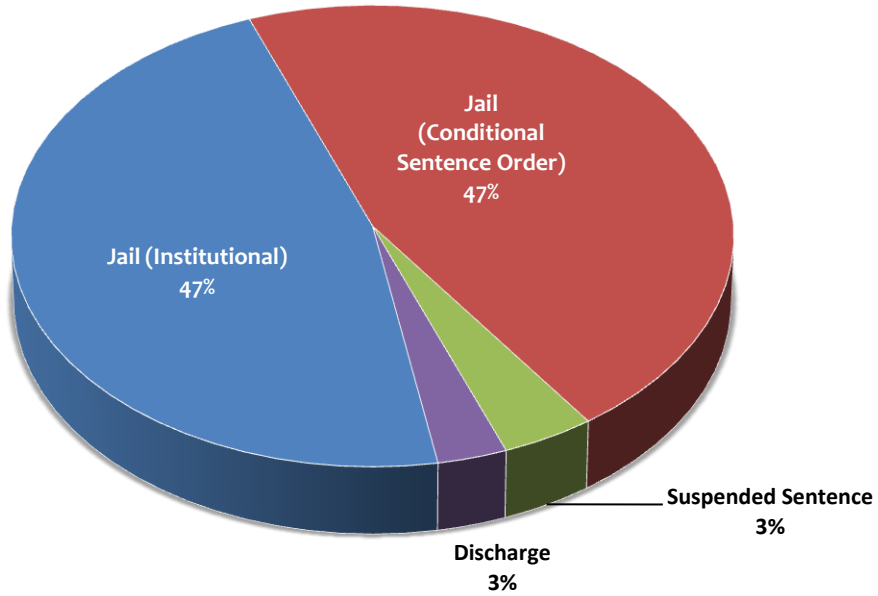
The British Columbia Court of Appeal in *R v Peepre* re-affirmed that both the context of the riot and the individual participation of the riot offender must be considered when sentencing a riot offender:<sup>9</sup>

Special considerations apply to sentences imposed for participation in a riot. Sentencing an offender for participation in criminal acts that involve widespread public disorder requires a court to look not only at the offender's individual conduct, but also the broader context in which the individual participated. A rioter is culpable for not only his own conduct: he bears, in a general way, a share of responsibility for the more widespread acts of lawlessness in which he participated... Citizens of Vancouver and members of the larger community present at the scene of the Stanley Cup riot were terrorized by the acts of violence to persons and property that occurred. That violence, and the public's consequential feeling that law and order had been cast aside, is significant in our consideration of the fitness of Mr. Peepre's sentence. Participation in a riot is a deliberate criminal act that has grave consequences for the safety and security of our community. The corollary of that fact is that those who participate must expect to be punished severely. By using the deterrent and denunciatory effects of sentencing in a manner that accounts for the current conditions in and values of the community, courts can discourage individuals from participating in acts of public violence and, hopefully, prevent the reoccurrence of events like the Stanley Cup riot.

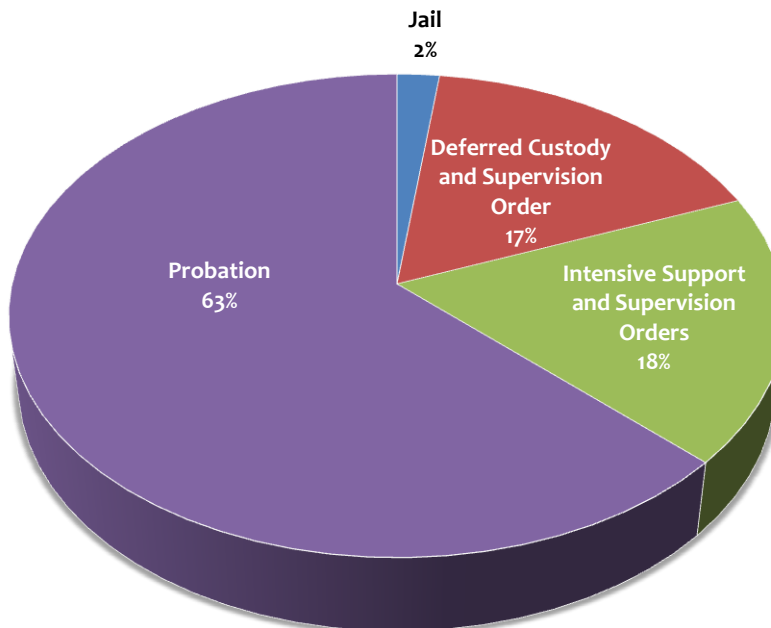
As set out in the sentencing graphs below, 94% of the adult riot offenders received jail sentences: 47% received a jail sentence to be served in an institution and 47% received a jail sentence to be served in the community under a Conditional Sentence Order (CSO). Of the youth riot offenders, 19% received jail sentences: 2% received a jail sentence in an institution and 17% received a jail sentence to be served in the community under a Deferred Custody and Supervision Order (DCSO). While on a CSO or DCSO, the offender is under supervision, and is required to abide by a number of conditions. The conditions restrict the liberty of the offender. If an offender disobeys any of the conditions, the judge can order the offender to serve a portion of the remaining sentence or the whole of the remaining sentence in an institution.

The remaining adults and youth offenders were sentenced to community supervision. The adults were bound by Probation orders, and the youth were bound by Intensive Support and Supervision Orders (ISSO) or Probation orders. The following graphs show the relative distribution of sentencing outcomes for adult and youth offenders.

### Riot Sentencing - Adult



### Riot Sentencing - Youth





## Appeals

Members of the RPT were involved in four appeals of adult riot sentences heard by the British Columbia Court of Appeal. In the first appeal, the Court of Appeal affirmed the principles of sentencing in relation to rioters, including stating that:

... first time offenders (meaning those with no criminal record) will nevertheless receive a prison sentence of some significant length if their conduct includes: inciting other; engaging in additional criminal activity, such as assaults (particularly of a police officer), arson, or wearing a mask; or committing multiple criminal acts in multiple locations.<sup>10</sup>

## Breaches

The Riot Prosecution Team dealt with all breaches of bail or probation by riot accused. In total, 147 RCCs alleging breach, in relation to 73 accused, were submitted to the RPT for charge assessment. 52 accused were brought to court on breach related matters on one or more occasions.

## Comparing Riot Prosecutions in Different Jurisdictions

Many comparisons have been made between the prosecution of the 2011 Vancouver Stanley Cup riot and the riots that occurred in the United Kingdom between August 6-10, 2011.

There are enormous difficulties in making meaningful comparisons between the two prosecutions due to the disparate nature of the two events.

## Nature and Context of the Events

The four-day “disorder” in England was described as the “most widespread outbreaks of disorder seen in England for a generation”. The disorder spread through 22 London boroughs, and then spread to other towns and cities across England. Five people lost their lives, and 300 police officers were injured. Some reports pegged the financial cost of the disorder at more than £370M.<sup>11</sup> The disorder was described as “widespread, fast moving and opportunistic criminal attacks on property, loosely organized using social media, and sometimes involving alliances between rival gangs”.<sup>12</sup> The spread of the disorder to other areas was attributed in part to social media and termed “copycat violence”<sup>13</sup>

In contrast, the Vancouver riot related to a single sporting event and an overcrowded downtown “live-site”, and alcohol over-consumption. The riot lasted only a few hours, and was restricted to Vancouver’s downtown core. There was never a real concern that it would continue into subsequent days or spread to other locations.

## Riot Participants

Only 17% of persons charged in the Vancouver riot had a criminal record.

Of the persons charged in the UK disorder, 71% had at least one previous criminal conviction, and 40% had more than five previous offences. The Metropolitan Police Service (MPS) reported that the majority of persons arrested had a “history of serious offending prior to their involvement in the

disorder.”<sup>14</sup> Much of the continuing disorder in the UK was attributed to opportunistic looting by persons with criminal histories, who were aware that police resources were committed elsewhere.<sup>15</sup>

### Video Evidence

Britain has over five million CCTV cameras, one for every 11 citizens.<sup>16</sup> The MPS collected 200,000 hours' worth of CCTV footage for investigating disorder offences.<sup>17</sup> The video footage appears to have been immediately available to police. At the time of the disorder, several borough-policing teams had established Visual Identification Image Detection Offices, with trained staff, which were “able to quickly secure CCTV evidence and make early arrests”.<sup>18</sup>

The video evidence available to prosecute participants in the Vancouver riot was provided by citizens, or obtained from media outlets by Court Order. The gathering of the video footage, and the ultimate verification of its authenticity, took considerable time in the investigative process.

### Investigation and Prosecution

Most of the persons arrested and charged in the England disorder were never charged with riot, violent disorder or similar offence under the UK *Public Order Act 1986*. Instead, they were charged with burglary or theft, rather than the more serious charges under the UK *Public Order Act 1986*.<sup>19</sup> Half of the offences charged were for burglary, “indicating the extent to which the disorder was characterised by widespread looting.”<sup>20</sup>

In contrast, 99% of the accused charged with offences from the Vancouver riot were charged with Riot under s. 65 of the *Criminal Code*. As discussed above, the offence of riot is more difficult to prove than other offences, and requires much more evidence than proving a mischief, theft or assault.

### Urgency

The nature of the England disorder of August 2011 provided a very different context and impetus for both law enforcement and prosecution than the 2011 Vancouver riot. In England, there was a continuing and serious spread of criminal behaviour that had to be quickly extinguished so as to restore civil order to large parts of London and other communities.

The rapid spread of the disorder throughout London and other communities in England required a rapid response from the Criminal Justice system in order to reassert order. Mass arrests placed urgent demands on prosecution and court resources.<sup>21</sup> London's chief prosecutor, Alison Saunders, spoke of the “... need to make sure we are taking people off the streets,” and of the need for “a swift reaction to the great disorder.”<sup>22</sup>

Court hours were extended to deal with the surge of in-custody cases. Accused were routinely detained in custody by the courts while the riots were continuing, because of the immense fear across the country of the riots starting again. Normally, 3.5% of accused persons would be denied bail, or 10% of persons charged with indictable offences, while about 60% of persons arrested during the disorder were remanded in custody.<sup>23</sup> Of the persons that were found or pled guilty, 43% were given an “immediate custody sentence”, whereas such a disposition normally occurred only 12% of the time. Custodial terms were significantly longer for those sentenced for offences during the disorder than otherwise.<sup>24</sup>

The quick reaction of the UK justice system was “strongly believed” to have “reduced copycat disorder and attrition rates” in part due to the extensive media coverage of the quick justice system response.<sup>25</sup> What was generally viewed as being necessary to bring the situation in England back under control was swift justice.<sup>26</sup>

### Comparing the Events

The prosecution of the England disorder and Vancouver riots were carried out in very different contexts. There was urgency in arresting and detaining rioters in London. Investigators in Vancouver required more time to properly obtain and authenticate video evidence so that the offence of riot could be properly established. The Criminal Justice Branch made conscious decisions to ensure criminal charges, when laid, properly captured all of the criminal acts and available evidence against the suspect. In order to obtain an appropriate sentence for the offender, Crown Counsel must prove the full extent of the offender’s involvement.

At the risk of over-generalizing, the British authorities needed to restore order by arresting and prosecuting as quickly as possible. Prosecutors in British Columbia, where civil order was re-established very quickly and was not further threatened, were able to choose a more thorough and expansive approach to the prosecution function. Both approaches have had their share of critics.<sup>27</sup>

### Legacy of the Prosecution

The Branch has learned much from the prosecution of the 2011 Vancouver riot, including the importance of:

- building cohesive prosecution teams;
- effectively utilizing photographic evidence, where available;
- ensuring that full disclosure of all evidence is provided by investigators to Crown prior to charge approval; and
- resisting pressure to dispense “quick” justice.

In his 2012 review of the BC charge assessment process, Mr. Gary McCuaig noted the criticism of the police and prosecution for perceived delays in the riot prosecution and concluded that it demonstrated a misunderstanding of the process. He observed that the police and prosecution “have devoted significant personnel ... to organize a huge amount of material so that the right people can be brought before the courts with strong evidence and the appropriate charges.”<sup>28</sup> By any measure, the final outcomes of the riot prosecutions confirm Mr. McCuaig’s earlier observations.

The scope of the 2011 Vancouver riot was unprecedented in Canada. The breadth of the riot investigation and prosecution based on photographic evidence was also without precedent. The photographic evidence was essential to identifying those who might have otherwise remained anonymous.

In *R v Chou* the Court stated:

When group unrest devolves to lawlessness, those who choose to stay in their midst are not innocent bystanders – their presence gives tacit or overt encouragement to others to join the fray. The group as a whole offers the shield of perceived anonymity to those individuals who, bolstered by adrenaline or a false sense of bravado, feel free to commit acts of lawlessness for

thrill seeking and personal gain. As has become evident, it is a fleeting anonymity in the age of social media.<sup>29</sup>

Although the riot investigation and prosecution process has seemed protracted, the cases have provided a repeated and ongoing reminder of the consequences of participating in a riot. Dave Jones, a security consultant for the Downtown Vancouver Business Improvement Association noted in August of 2015 that the prosecution of the rioters has had a calming effect on the crowds at major events in downtown Vancouver:

I think all the prosecutions were a wake-up call for people — it was the most recorded riot of all time. You can't go anywhere now without somebody recording you and it just makes it a much higher risk to behave badly.<sup>30</sup>

In sum, the police and the prosecution service expended considerable resources to ensure that those who participated in the Vancouver 2011 riot were held to account. Hopefully, this prosecution will deter – even prevent – the reoccurrence of events like the 2011 riot, as those who would riot and commit other crimes under cover of a crowd now know they do so at their peril.



## NOTES

- <sup>1</sup> <https://bccla.org/news/2011/06/bccla-congratulates-vpd-on-restraint-last-night/>
- <sup>2</sup> See for example *R v Yates*, 2012 BCPC 250 at §12.
- <sup>3</sup> “Vancouver police chief cites ‘double jeopardy’ for delay in laying riot charges” *Globe and Mail* August 30, 2011 Wendy Stueck; CBC news “Delay in Vancouver riot charges a contrast to U.K.” August 10, 2011; *Globe and Mail* “B.C. court system girds for riot-related overload” October 31, 2011 Sunny Dhillon.
- <sup>4</sup> *Vancouver Sun*, *a Division of Postmedia Network Inc v BC*, 2011 BCSC 1736.
- <sup>5</sup> Accused may be charged with offences from one or more categories; assault with a weapon is included in the weapons offences category; possession of incendiary materials is included in arson category; possession of stolen property is included in the theft offences category.
- <sup>6</sup> One sentencing hearing is still outstanding at the time of publishing this report.
- <sup>7</sup> *R v Patillo*, 2012 BCPC 299.
- <sup>8</sup> *R v Yates*, 2012 BCPC 250.
- <sup>9</sup> *R v Peepre*, 2013 BCCA 115 at §27.
- <sup>10</sup> *R v Peepre*, 2013 BCCA 115 at §30.
- <sup>11</sup> HMIC, *The Rules of Engagement: A Review of the August 2011 Disorders*, 2011, p. 13.  
<https://www.justiceinspectorates.gov.uk/hmic/media/a-review-of-the-august-2011-disorders-20111220.pdf>
- <sup>12</sup> HMIC, *The Rules of Engagement: A Review of the August 2011 Disorders*, 2011, p. 4.
- <sup>13</sup> HMIC, *The Rules of Engagement: A Review of the August 2011 Disorders*, 2011, p. 16.
- <sup>14</sup> Metropolitan Police Service, *4 Days in August: Strategic Review into the Disorder of August 2011*, March 2012, p. 126:  
<http://content.met.police.uk/cs/Satellite?blobcol=urldata&blobheadname1=Content-Type&blobheadname2=Content-Disposition&blobheadvalue1=application%2Fpdf&blobheadvalue2=inline%3B+filename%3D%22145%2F595%2Fco553-114DaysInAugust.pdf%22&blobkey=id&blobtable=MungoBlobs&blobwhere=1283551523589&ssbinary=true>
- <sup>15</sup> Metropolitan Police Service, *4 Days in August: Strategic Review into the Disorder of August 2011*, March 2012, p. 14; see also *Reading the Riots*, the Guardian & the London School of Economics:  
<http://www.theguardian.com/uk/interactive/2011/dec/14/reading-the-riots-investigating-england-s-summer-of-disorder-full-report>
- <sup>16</sup> <http://www.telegraph.co.uk/technology/10172298/One-surveillance-camera-for-every-11-people-in-Britain-says-CCTV-survey.html>
- <sup>17</sup> Metropolitan Police Service, *4 Days in August: Strategic Review into the Disorder of August 2011*, March 2012, p. 127.
- <sup>18</sup> Metropolitan Police Service, *4 Days in August: Strategic Review into the Disorder of August 2011*, March 2012, p. 127.
- <sup>19</sup> Only 22% of the accused were charged with an offence related to “violent disorder”, which includes the following offences: Violent disorder, Riot, Affray, Summary causing intentional harassment, alarm or distress, Summary harassment, alarm or distress, Assault with intent to resist apprehension or assault a person assisting a constable, Common assault offences, Assaulting a constable and offences under *Public Order Act* and *Justice of the Peace Act*). See *Statistical Bulletin on the Public Disorder of 6<sup>th</sup> to 9<sup>th</sup> August 2011*, Ministry of Justice, 13 Sept 2012, pp. 7-8.  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/219665/august-public-disorder-stats-bulletin-130912.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/219665/august-public-disorder-stats-bulletin-130912.pdf)
- <sup>20</sup> The Guardian, Tuesday 3 July 2012: <http://www.theguardian.com/uk/2012/jul/03/chaos-courts-justice-system>
- <sup>21</sup> *4 Days in August*, p. 130.
- <sup>22</sup> <http://www.theguardian.com/uk/2011/aug/12/uk-riots-courts-warning>
- <sup>23</sup> <http://www.theguardian.com/uk/2011/aug/12/uk-riots-courts-warning>; *Statistical Bulletin on the Public Disorder of 6<sup>th</sup> to 9<sup>th</sup> August 2011*, Ministry of Justice, 15 Sept 2011, p. 4.
- <sup>24</sup> *Statistical Bulletin on the Public Disorder of 6<sup>th</sup> to 9<sup>th</sup> August 2011*, Ministry of Justice, 15 Sept 2011, p. 4. See also:  
<http://www.channel4.com/news/more-than-1-000-people-charged-with-riot-offences-met>
- <sup>25</sup> *4 Days in August*, p. 131.
- <sup>26</sup> The Guardian, Tuesday 3 July 2012: <http://www.theguardian.com/uk/2012/jul/03/chaos-courts-justice-system>
- <sup>27</sup> The Guardian newspaper published many articles on the aftermath of the riots and the Justice system’s response in that country, some of which noted there were concerns about their Justice system’s response to the disorder. We do not mention this to criticize the British justice system or its participants, simply to note that there are choices that are made that have consequences to the system. As the law and the justice system are social constructs that should reflect society’s social values, these choices and their consequences are worthy of public discussion.
- <sup>28</sup> Gary McCuaig QC, *British Columbia Charge Assessment Review*, Schedule 11 to D. Geoffrey Cowper QC, *A Criminal justice System for the 21<sup>st</sup> Century* (2012), p. 235.
- <sup>29</sup> *R v Chou*, 2013 BCPC 23 at §28
- <sup>30</sup> <http://www.news1130.com/2015/07/29/fireworks-crowds-better-behaved-in-recent-years/>

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