

confessions and bodily substances than they do evidence based on physical items such as guns. Here is the final key point: Your goal is to *prevent* Charter violations. With no Charter violation, s. 24(2) *does not apply*.

THE SECTION 24(2) PENDULUM SWING

For years following the *Stillman* case, an extreme pattern developed in the courts with respect to admissibility. Evidence obtained after a Charter violation was almost always excluded. An extensive case law review has shown that the judicial pendulum has swung the other way and that a more balanced approach has been adopted. This trend began in 2004 and was evident in *R. v. Harrison* (2008)—a more flexible approach to s. 24(2) Charter that has resulted in more evidence being admitted.⁴ The *Harrison* case is the most important case since *Stillman*, because evidence that was seized after a “flagrant” Charter violation was admitted. This case is the best illustration of how s. 24(2) is supposed to apply, meaning that the severity of the offence is supposed to be weighed against the severity of the Charter violation before the evidence is ruled inadmissible. In the *Harrison* case, the offence of trafficking narcotics was considered to be far more severe than the Charter violation of which the police in the case were guilty. Refer to the accompanying website, www.emp.ca/arcara/policepowers4E, for more discussion of *R. v. Harrison* and for the case law review that explains the pendulum swing with respect to admissibility.

ARREST: PREVENTING CHARTER VIOLATIONS

Figure 9.1 outlines the 15-step continuum.

