# BREAKING THE GOLDEN RULE A REVIEW OF POLICE STRIP SEARCHES IN ONTARIO



Gerry McNeilly Independent Police Review Director March 2019

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## ACKNOWLEDGEMENTS

I am grateful to my counsel on this review, Mark J. Sandler of Cooper, Sandler, Shime and Bergman LLP, whose sound advice, experience and expertise were invaluable in the completion of this report. Mark was ably assisted by Ben ElzingaCheng, also of Cooper, Sandler, Shime and Bergman LLP.

I would like to especially thank Rosemary Parker, Manager, Strategic Initiatives and Systemic Reviews, whose tireless commitment to this report and the systemic review mandate of the OIPRD has been truly invaluable to me.

I would like to acknowledge and thank my systemic review team:

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I would also like to thank my Communications staff: Ruby Chauhan Victoria Musgrave

Thanks also to the staff of the OIPRD, for their support during this systemic review.

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## INTRODUCTION AND EXECUTIVE SUMMARY

In 2013, "A Toronto police officer testified in court that he has stripped "hundreds" of people completely naked as part of routine searches, despite police policy stating that must not be done."<sup>1</sup> The Toronto Star news article went on to report that, "The officer told the court he was trained by his coach officer, a police mentor, to strip-search people fully naked," and, "The officer said he was unaware of the court case that laid out the proper procedure."<sup>2</sup>

The trial judge voiced concern about how this strip search was conducted. The prosecution dropped the charges once the trial judge excluded evidence of crack cocaine stashed in the accused's buttocks, based on the unlawfulness of the underlying arrest.<sup>3</sup>

In July 2017, under the headline: Judge Blasts OPP Officers for 'Egregious' Strip Search of Impaired Driving Suspect, the Toronto Star wrote:

A judge stayed impaired driving charges a woman was facing after she was forced to remove her bra at an Ontario Provincial Police detachment. ... "The indifference expressed by both officers ... to their obligation as police officers to abide by the legal constraints surrounding strip searches is very concerning," [Judge] Deluzio wrote.<sup>4</sup>

Later that same year, the Toronto Star reported:

Another unlawful strip search, another crumbling criminal case. A Toronto judge has thrown out all drug evidence seized ... finding Toronto police had no reasonable grounds to pull back [the accused's] pants and boxer shorts at the scene of his arrest to locate concealed drugs near his tail bone.<sup>5</sup>

<sup>&</sup>lt;sup>1</sup> Casey, Liam. "Toronto Police Officer Strips Naked "Hundreds" of People." *Toronto Star*, (Toronto), December 29, 2013. From Toronto Star. © 2013 Toronto Star Newspapers Limited. All rights reserved. Used under license.

<sup>&</sup>lt;sup>2</sup> Casey, Liam. "Toronto Police Officer Strips Naked "Hundreds" of People." From Toronto Star. © 2013 Toronto Star Newspapers Limited. All rights reserved. Used under license.

<sup>&</sup>lt;sup>3</sup> R. v. Lerondo Smith, [2013] ONSC.

<sup>&</sup>lt;sup>4</sup> Gallant, Jacques. "Judge Blasts OPP Officers for 'Egregious' Strip Search of Impaired Driving Suspect." *Toronto Star* (Toronto), July 10, 2017. From Toronto Star. © 2017 Toronto Star Newspapers Limited. All rights reserved. Used under license.

<sup>&</sup>lt;sup>5</sup> Gallant, Jacques. "Judge Tosses Drug Evidence, Finds Toronto Cops Were 'Ignorant' of Strip Search Law." Toronto Star (Toronto), September 20, 2017. From Toronto Star. © 2017 Toronto Star Newspapers Limited. All rights reserved. Used under license.

In her ruling, the judge stated:

The officers were ignorant of the law. They thought that exigent circumstances justified what they did, and that what they did was not a strip search. They were wrong, and this should not have happened. ... It does not mitigate the seriousness of the breach that the officers were ignorant of the law governing strip searches, and that they did not even understand that this was a strip search. *Golden* was not decided yesterday. It was decided in 2001.<sup>6</sup>

In March 2018, under the headline, Accused Drunk Driver Freed after Cop Conducts Improper Strip Search, the Toronto Sun wrote:

Toronto Police had no authority to look where the sun don't shine. Strip searches are supposed to be done in only restricted situations – yet it seems a sergeant in Scarborough still hasn't read the memo. And now an alleged drunk driver is off the hook.<sup>7</sup>

Each year, well over 22,000 strip searches are conducted by police officers in Ontario, the majority by the Toronto Police Service.

In some circumstances, there will be a valid law enforcement or public safety justification for conducting strip searches of arrested individuals. However, their level of intrusiveness and the impact they can have on individuals require police services and their employees to clearly understand when strip searches are appropriate and how they are to be conducted.

Strip searches are "inherently humiliating and degrading."<sup>8</sup> Individuals who have experienced strip searches have described them as "demeaning," "upsetting" and "devastating." Some suffer varying degrees of psychological harm as a result of being strip searched. This is especially so for individuals who have been

<sup>&</sup>lt;sup>6</sup> R. v. MacPherson, 2017 ONCJ 615, para 35, 37. (CanLII), http://canlii.ca/t/h5whj

<sup>&</sup>lt;sup>7</sup> Mandel, Michele. "Accused Drunk Driver Freed after Cop Conducts Improper Strip Search." Toronto Sun (Toronto), March 13, 2018. Used with permission.

<sup>&</sup>lt;sup>8</sup> R. v. Golden, [2001] 3 SCR 679, para 90. (CanLII) http://canlii.ca/t/51xm

traumatized in the past or are otherwise vulnerable. Often, those involved in the justice system do not fully understand the impact on those who are affected.

Police officers must only conduct or authorize the use of strip searches in compliance with the law, including section 8 of the Canadian Charter of Rights and Freedoms, which states, "everyone has the right to be secure against unreasonable search and seizure."

In 2001, in a landmark decision on the constitutionality of strip search practices (*R. v. Golden*), the Supreme Court of Canada defined what amounts to a strip search, and when and how it can lawfully be done. Despite this decision on the legality of strip searches, courts in Ontario continue to regularly find that police officers unlawfully or unreasonably conduct strip searches, sometimes resulting in the exclusion of evidence or the stay of charges.

Members of the public, as well as participants in the criminal justice system, continue to express concerns about the overuse or misuse of police powers in conducting such searches. A number of these concerns are well-founded. Illegal strip searches often go unaddressed because no charges are pursued. The public is also concerned – and rightfully so – that illegal strip searches may result in criminal cases being dismissed without a trial on the merits.

Allegations of unlawful or improper strip searches have been made – some substantiated, some not – in complaints to my office, the Office of the Independent Police Review Director (OIPRD), since its inception. These complaints continue unabated.

It is extremely concerning that almost two decades after the *Golden* decision, police compliance is still a serious issue.

### THE REVIEW

Based on my review of public complaints about strip searches, I decided that the issues raised about strip searches in Ontario could not be adequately addressed solely through consideration of individual complaints as they arose. I also know that many individuals choose not to initiate complaints against the police, despite concerns about how they were dealt with. Equally important, I am not satisfied that consideration of individual complaints alone addresses this issue in the most efficient and effective way. I determined that a proactive approach to prevent unlawful or unreasonable strip searches from occurring was required.

The Police Services Act gives me, the Independent Police Review Director, the authority to examine and review issues of a systemic nature that may give rise to public complaints, and make recommendations to police chiefs, police services boards, the Attorney General, the Minister of Community Safety and Correctional Services and any other body. A systemic review is designed to identify and address larger issues of systemic importance, rather than find individual misconduct.

On July 26, 2016, I began a systemic review of strip searches conducted by police services of individuals arrested or detained. As outlined in the terms of reference, my systemic review examined:

- The prevalence of strip searches incidental to police arrest or detention
- Existing policies of police services across Ontario, as they relate to when and how strip searches are to be conducted

- The extent to which front-line officers are aware of existing policies, and how, if at all, compliance with existing policies is monitored and supported
- The extent to which strip search decisions are documented
- The extent to which judicial findings of improper strip searches are identified by the relevant police services and addressed
- Ontario Police College and police services training provided to supervisors and front-line officers regarding strip searches

This report is the culmination of the systemic review.

In undertaking this review, my systemic review team first collected and examined numerous judicial decisions finding that unlawful strip searches had occurred. My team also reviewed substantiated public complaints to the OIPRD regarding strip searches. I then requested existing policies, protocols and procedures regarding strip searches from Ontario municipal, regional and provincial police services under my jurisdiction.<sup>9</sup> I requested police statistics, data and records on the use of strip searches, as well as information on training provided to police officers on strip searches. I also requested and received information from the Ontario Police College on officer training regarding strip searches.

I requested and received submissions from interested stakeholders, including the Toronto Police Accountability Coalition. These submissions were helpful in identifying issues and potential recommendations for change. Police services and police associations were given the opportunity to make recommendations and suggestions regarding strip search procedures and practices. A number responded.

<sup>&</sup>lt;sup>9</sup> Pursuant to policing legislation, police service boards create "policies;" police services create "procedures." However, the terms "policies," "protocols," and "procedures" are often used interchangeably by various stakeholders and by police in describing the documents that police services have created. Unless the context requires otherwise, I use the term "procedures" in this report.

In Chapter 1 of my report, I set out the Supreme Court of Canada decision in *R. v. Golden*, which gives police direction on how and when strip searches can lawfully be conducted. Each chapter contains relevant recommendations, which are all reproduced for convenience immediately following this introduction and executive summary.

As part of my review, we examined reported criminal decisions in Ontario following the *Golden* decision that found unlawful strip searches had occurred. Chapter 2 provides data regarding these cases.

Chapter 3 reports and comments on police service statistics provided to my office for this review.

Chapter 4 reviews the police procedures that cover strip searches in Ontario, including definitions of strip searches and when and how they can lawfully be performed.

In Chapter 5, I look at the training provided to police officers regarding strip searches.

Chapter 6 provides a conclusion.

I include three appendices in my report. Appendix A contains a template for strip search procedures, to assist police services in creating or modifying their own strip search procedures. Appendix B contains a sample strip search form that police services can adopt to help ensure strip searches are properly documented. Appendix C contains a list of the judicial cases examined in Chapter 2. These cases are summarized in the supplemental *Summary of Ontario Jurisprudence Involving Strip Searches Post R. v. Golden* available on the OIPRD website.

### **OVERVIEW OF FINDINGS**

#### THE IMPORTANCE OF ADEQUATE STATISTICS

Judicial decisions and complaints to the OIPRD can highlight strip searches that were unlawful or otherwise improperly done. However, judicial decisions only represent cases that go before the courts. Complaints typically only represent cases where an interested complainant has continued with the complaints process through investigation to completion of the case. These cannot accurately capture the scope of lawful and unlawful strip searches in Ontario.

I was interested, among other things, in attempting to quantify the number of strip searches being conducted in Ontario. This prompted me to request that all Ontario police services subject to OIPRD oversight provide data and statistics regarding strip searches. That request exposed significant deficiencies in how and what data and statistics are kept.

First, the majority of services were unable to provide the OIPRD all information requested because, while strip search information may be recorded in officers' notebooks, the information is not inputted into a computer system. Some Ontario police services have more recently moved towards electronic record-keeping regarding prisoners and, as a result, were able to search for and provide data concerning the number of persons arrested who were also strip searched.

Second, some police services did not adequately, or at all, document in their notes or otherwise, the types of searches conducted of suspects or accused upon detention or arrest, the grounds for strip searches, the number of times items were found as a result of a strip search (as opposed to another type of search) or complete descriptions of the items found.

Third, different police services categorized searches differently. This meant that true strip searches were either unreported or at times inconsistently reported as between the various services. It was obvious to us that some police services had an overly narrow view of what constituted a strip search. Less frequently, others were over-inclusive in what they characterized as strip searches. This skewed, somewhat, any true comparative analysis.

Fourth, historically, Ontario police services have not generally kept race-related statistics of their interactions with members of the public resulting in strip searches. This significantly impairs the ability of oversight agencies and others to conduct evidence-based (rather than speculative) evaluations of the role that race plays in whether and how strip searches are conducted. This type of evaluation is long overdue.

There has been an intense debate in recent years over whether the police should keep race-related statistics, and if so, what kinds of statistics. There is now a recognition that such statistics need to be kept. A number of interested parties contend that race figures prominently not only in whether someone is stopped on the street, questioned or held in custody, but also in whether they are likely to be subjected to a strip search. I recommend that the police should keep and publish race-related statistics regarding strip searches.

In my view, all police services in Ontario must keep accurate statistics of the number of persons they arrest or detain, the number of persons strip searched (based on a common interpretation of what a strip search entails, in accordance with binding jurisprudence) and the justifications provided for such strip searches. The statistics must also capture identity-related information to reflect, among other things, the race of the person subjected to such a strip search. Effective oversight and accountability require adequate statistics, officer notes and prisoner management documentation pertaining to strip searches. My recommendations address these issues.

There is broad consensus and judicial support for the principle that strip searches should not be done as a matter of routine. Stakeholders debate whether, and to what extent, strip searches are overused by at least some police services. The Toronto Police Accountability Coalition submitted that reasonable guidance for police services would anticipate that only five per cent of prisoners arrested should be subjected to strip searches.

While this submission was helpful in identifying the problem to be addressed, I am not inclined to the view that an artificial guideline should be used. A "five per cent" guideline would represent a significant increase in strip searches for some police services. Some smaller police services report that strip searches are very rare and some anecdotally report no strip searches conducted in the recent past. Even recognizing the deficiencies in current statistics, it is obvious that police services across the province have very different practices regarding the nature and frequency of strip searches. Better statistical information would enhance public knowledge and the ability to provide guidance to police services in this important area.

Statistics and full record-keeping could also contribute to learning the extent to which strip searches<sup>10</sup> result in the discovery of secreted items otherwise undiscoverable through less intrusive searches. This might inform best practices going forward.

#### THE IMPORTANCE OF CONSISTENT AND COMPREHENSIVE POLICIES AND PROCEDURES

The procedures that police services submitted for this review were mostly based on the Search of Persons guideline (LE-012) created by the Ministry of Community Safety and Correctional Services (MCSCS). This guideline is contained in the Policing Standards Manual. However, the manual was last updated in 2000, prior to the Supreme Court of Canada's decision in *Golden*. As a result, I found existing procedures for police services across Ontario were, at times, inconsistent. Some were less comprehensive than others. For example, the definition of what constitutes a strip search in some police service procedures did not conform to the definition adopted by the Supreme Court of Canada in *Golden*. It should.

<sup>&</sup>lt;sup>10</sup> This does not refer to the most intrusive searches – body cavity searches.

The MCSCS Search of Persons guideline should be updated as part of a larger initiative to create consistent and comprehensive policies and procedures on strip searches across the province.

In addition to moving towards greater consistency in police procedures around strip searches, there are some important initiatives in this area each police service should consider. For example, it would be helpful if police services audio recorded or videoed the process leading up to the strip search, including the articulation of the grounds for the strip search. Indeed, the Toronto Police Service submitted that the actual search be audio recorded to have an accurate representation of the strip search while protecting the privacy and dignity of the searched individual. This may represent a best practice, although not necessarily a mandated practice, for all police services.

Many, but not all, services have adopted procedures regarding searches of transgender persons. Only a very few have adopted procedures regarding the searches of persons wearing religious attire. In some jurisdictions, officers may not encounter these situations frequently – all the more reason why explicit direction is warranted.

The existence of consistent and comprehensive policies and procedures on strip searches across Ontario is of obvious importance. However, my systemic review, coupled with existing jurisprudence, makes it clear that too often police officers do not even follow existing procedures. A number of officers professed ignorance of existing procedures or misunderstood what their obligations were. I find it intolerable that almost 20 years after the *Golden* decision, compliance with, and indeed, knowledge of, its requirements remain a source of continuing concern.

This report includes a template for a procedure on strip searches that incorporates recommendations from various stakeholders, as well as my own thoughts. It is intended to assist all Ontario police services in creating or modifying their own strip search procedures. This template is designed not only to promote provincewide procedures that comply with existing jurisprudence, but to promote best practices in circumstances not currently addressed in existing jurisprudence.



#### THE IMPORTANCE OF TRAINING

The number of cases in which officers deviated from existing jurisprudence or procedures made it imperative for me to examine the training of police officers related to strip searches and searches more generally. Front-line officers and their supervisors make the decisions about who gets strip searched, and when and how the strip search occurs. Adequate training is crucial to prevent the inappropriate and unlawful exercise of police powers.

I found many police services do not have an annual refresher training course specific to strip searches. Other police services include search of persons training with their annual use of force training. In some services, there is no training at all regarding strip searches.

The bottom line is that training regarding strip searches is uneven, both in relation to whether or when it is offered and in relation to its content. The court cases that turned on the lawfulness of a strip search raise serious issues about the training offered by police services about their own procedures, as well as the extent to which such training has been effective.

In this report, I recommend regular training for all Ontario police officers on searches of persons, including strip searches. This training should be informed by the most prevalent issues identified in judicial decisions, as well as by the contents of this report.

### RECOMMENDATIONS

- 1. Every police service in Ontario, in consultation with the Ministry of the Attorney General and local Crown counsel, should ensure that they are made aware of judicial findings of charter violations in strip search cases, and proactively take measures to address the issues raised when appropriate. Such measures may involve anything from counselling, guidance, added supervision or training to prevent future violations to disciplinary proceedings in more egregious cases.
- 2. All police services in Ontario should ensure that they keep accurate statistics of the number of persons they arrest or detain, the number of persons strip searched (based on a uniform interpretation of what a strip search entails, as set out in this report's procedures template, and in accordance with binding jurisprudence) and the justifications provided for such strip searches.
- 3. The statistics should also identify, among other things, the race of the person subjected to such a strip search.
- 4. Statistics pertaining to the number of persons arrested and number of persons strip searched, including race-related information, should be made available to the public annually. Any public report should not contain information that might lead to the identification of the persons who were the subject of the searches.

- 5. Electronic record-keeping greatly facilitates the collection of these statistics. Police services should continue to move to implement electronic record-keeping to enable, among other things, accurate and timely access to statistics on the number of arrests and strip searches conducted and facilitate access to case-specific information pertaining to individual strips searches.
- 6. Every police service in Ontario should ensure that statistics pertaining to strip searches include accurate and complete information on the nature and number of items found and/or removed as a result of such strip searches. These statistics should be electronically accessible.
- 7. The training for police officers respecting strip searches should include, as a component, how to accurately document the items found and/or removed during a strip search, and why any such items were removed, as well as the importance of distinguishing between the types of search that resulted in the items being found and/or removed.
- 8. Police services, government and oversight agencies should draw upon the accurate, uniform and comprehensive statistics to be collected by police services across Ontario to inform existing and best practices, as well as the need for education and training, identify areas of continuing concern, and take measures to rectify poor practices and ensure accountability.
- 9. The Ministry of Community Safety and Correctional Services should update the Policing Standards Manual, and most particularly the Search of Persons Guideline to reflect existing jurisprudence, including but not limited to, the decision of the Supreme Court of Canada in *R. v. Golden*.

- 10. The Search of Persons Guideline should provide much greater assistance in enabling police service boards and police services to develop compatible policies, procedures and practices respecting searches across the province. This assistance should include a clear definition of a strip search (drawn from the *Golden* decision), clear demarcation between strip searches and frisk, pat-down or field searches, on the lower end of the spectrum of searches, and body cavity searches at the higher end of the spectrum. It should also include greater specificity around whether and how strip searches are conducted, authorized or supervised. Its content should be informed by the recommendations in this report.
- 11. All policies and procedures across the province should use the same terminology to describe a strip search, such as the definition of a strip search in our procedures template.
- 12. All policies and procedures across the province should incorporate the term "strip search" into their policies and procedures. Terms such as "complete," "thorough" or "detailed" are confusing and should be avoided.
- 13. If police services wish to situate strip searches within a spectrum of searches of different levels (such as the numbering system used by Toronto Police Service), their policies and procedures should explicitly relate the applicable level of search to the term "strip search" to enhance understanding and connect those procedures to existing jurisprudence.
- 14. Through the Search of Persons Guideline or other regulation, the Ministry of Community Safety and Correctional Services should ensure that levels of searches are described and defined consistently throughout the province.

- 15. All procedures pertaining to strip searches should explicitly contain a definition of a strip search. That definition should conform to the full definition provided by the Supreme Court of Canada in the *Golden* decision, such as the definition of a strip search in our procedures template.
- 16. Where a procedure extends to police searches that are not covered by the *Golden* definition, the other types of searches should be clearly differentiated from strip searches. This promotes accurate statistical and comparative analyses, accountability, oversight and training for officers.
- 17. Every police service in Ontario should ensure that their procedures pertaining to strip searches explicitly set out the threshold preconditions to a valid strip search, with particular emphasis on the requirement that the police must believe, on reasonable and probable grounds, that a strip search is necessary in the particular circumstances of the case either for safety (that is, for the purpose of discovering weapons in the detainee's possession) or to discover evidence related to the reason for the arrest.
- 18. These procedures should also explicitly state that a strip search, done as a matter of routine without regard to the specific circumstances of the specific case, will violate section 8 of the charter even if it is carried out in good faith without violence.
- 19. The fact that an individual is being held for a show cause hearing does not conclusively determine whether a strip search is permissible, though it is a relevant factor for consideration, together with the anticipated circumstances surrounding the arrestee's detention, pending the show cause hearing or release from custody.
- 20. Every police service in Ontario should ensure that their procedures and training reflect that the fact that a show cause hearing will be held does not mandate a strip search in every case.

- 21. Every police service in Ontario must communicate effectively to their officers, through illustrations informed by existing jurisprudence, what would amount to unlawful routine strip searches. Such communication should form an essential part of officer training. However, such police services would also be well advised to briefly include in their procedures several prominent examples of unlawful strip searches done routinely. These examples might include:
  - (a) Strip searches inevitably done, regardless of the individual circumstances, based on the nature of the charge(s) (e.g. drug offences) faced by the arrested individual.
  - (b) Strip searches inevitably done because the arrested individual will be held for a show cause hearing, regardless of whether that individual will be detained or transported with others, and regardless of whether reasonable grounds exist that a strip search is necessary for the safety of that individual or others.
  - (c) The automatic removal of bras or underwire bras, and string bikini tops, regardless of the individual circumstances.
- 22. The procedures for every police service in Ontario should state that strip searches should always be conducted in a private area within the police station or detachment unless exigent circumstances exist, which are fully documented by the officers involved, to conduct a strip search in the field.
- 23. The procedures for every police service in Ontario should state that a strip search will always be unreasonable if it is carried out abusively or for the purpose of humiliating or punishing the arrested person.

- 24. Every police service in Ontario should promote, in their procedures, the use of a frisk and/or wand or analogous less intrusive search methods before officers decide whether to conduct a strip search. If the results of a frisk/wand or analogous search methods are negative, officers should not conduct a strip search on safety grounds unless they are able to articulate why they have reasonable and probable grounds to believe that the arrested person is concealing a weapon.
- 25. Every Ontario police service's procedures should provide that:
  - (a) Absent exigent circumstances, strip searches should always be authorized, in advance, by a supervisor (who may include the Officer-in-Charge).
  - (b) Such authorization should be given in writing or alternatively, by telephone.
  - (c) Absent exigent circumstances, that authorization should be obtained from a supervisor who is senior in rank to the most senior searching officer and who was not actively involved in the investigation that led to the arrest.
  - (d) Absent exigent circumstances, that authorization should be obtained in writing; in any event, the authorization should be documented by the searching officer and the supervisor in accordance with the police service's documentation requirements, whether through notes, strip search forms or both.
  - (e) Exigent circumstances, involving the failure to obtain authorization or the failure to obtain written authorization in advance should also be documented as provided for in the service's procedures.
  - (f) Practices surrounding strip searches are to be reviewed by the service on at least an annual basis.

- 26. Every police service in Ontario should ensure that its procedures address:
  - (a) The ordinary requirement that searching officers be of the same gender as the person to be searched.
  - (b) The practice to be adopted when there are insufficient officers of the same gender to participate in the strip search.
  - (c) The circumstances under which the strip search should not be conducted by searching officers of the same gender as the person to be searched: for example, based on the person's selfidentification respecting sexual orientation.
- 27. Every police service in Ontario should ensure that their procedures specifically address the appropriate practices for strip searches involving transgender persons.
  - (a) Procedures should define terms such as: transgender, trans man, trans woman, transsexual, gender identity and intersex.
  - (b) Police services are encouraged to consult with the Ontario Human Rights Commission and community organizations with specialized knowledge, in crafting appropriate practices.
  - (c) Procedures should be centred on reasonable accommodation based on self-identification. For example, where the arrested person identifies as trans man or trans woman, the arrested person should specifically be given the choice of a male, female or split search.

- 28. Every police service in Ontario should ensure that their procedures provide that ordinarily, strip searches should be conducted by no more than two officers, unless security concerns compel the presence of additional officers. When that presence is required, the additional officer or officers should ordinarily remain outside the searching room, not facing the person to be searched, unless their active assistance is required. It represents a best practice for strip searches, where practicable, to be conducted by officers other than the arresting or investigating officer.
- 29. Every police service in Ontario should ensure that their procedures provide that, absent exceptional circumstances, arrested persons should be given the opportunity to remove their clothing, as directed by the police, on their own.
- 30. Every police service in Ontario should ensure their procedures direct officers to document whether arrested persons removed items of clothing themselves.
- 31. Every police service in Ontario should ensure their procedures reflect that officers are only to use force when necessary and in proportion to the resistance of the arrested person.
- 32. Every police service in Ontario should consider whether they can designate a fixed location or fixed locations where strip searches are to be conducted, absent exigent circumstances. Of course, these fixed locations should be designed so as to promote privacy.
- 33. Every police service in Ontario should ensure that their procedures provide that officers note the time a strip search commenced and the time it was completed, and provide an explanation in writing for a strip search of unusual duration.

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- 34. Every police service in Ontario should ensure that their procedures provide that:
  - (a) Detainees should never be completely naked, absent exigent circumstances.
  - (b) The removal of items of clothing should be done sequentially.
  - (c) Officers should document the sequence of removal and replacement of items of clothing.
- 35. I support the pilot project of Toronto Police Service to evaluate whether the use of full-body scanners can be used as a way to reduce the number of strip searches conducted by the service.
- 36. Every police service in Ontario should ensure that their procedures provide that strip searches should generally involve only a visual inspection, rather than physical contact and that any physical contact should be documented.
  - (a) Such procedures should clearly articulate when a strip search becomes a more intrusive body cavity search.
  - (b) Procedures should separately address when and how body cavity searches can and should be conducted.
  - (c) Such procedures should also provide that if a visual inspection reveals the likely presence of a weapon or evidence in a body cavity, the arrested person should be given the option of removing the items themselves or having the items removed by a trained medical professional. Otherwise, the police should seek the advice and assistance of a trained medical professional to ensure that the items can be safely removed. The ultimate manner of removal should be documented.

- 37. Every police service in Ontario should ensure that their procedures provide that all strip searches must be fully documented, including:
  - (a) The grounds for such a search.
  - (b) The officers conducting the search.
  - (c) The manner in which the search was conducted, including what items were removed or replaced and in what sequence, whether items were removed by the detainee or the officer, and what, if any, physical contact accompanied the search.
  - (d) The supervisor authorizing the search.
  - (e) The time frame within which the search was conducted.
  - (f) A description of items found as a result of the search, and where they were found.
  - (g) If it appears that a bodily cavity contains an item to be seized, what steps were taken to obtain the items, including any options given to the detainee.
  - (h) What, if any, exigent circumstances existed that required deviation from established procedures.
- 38. Based on the sample strip search form contained in this report, every police service in Ontario should adopt a strip search form to enhance proper documentation of strip searches.
- 39. Such procedures should provide direction on when the strip search form or parts thereof should be completed.
- 40. These forms should be accessible electronically.

- 41. There should be no video recording of strip searches. However, police services may establish procedures to video record the process leading up to the strip search, including the articulation of the grounds for the strip search.
- 42. Unless impracticable to do so, every police service in Ontario should establish procedures to audio record strip searches. Officers should be trained on audio recording procedures, including the need to verbalize what is transpiring and seek verbal acknowledgements from the detainee throughout the search.
- 43. Every police service in Ontario should ensure that they collect racerelated information pertaining to strip searches. Their procedures should address how that information should be collected and recorded. Race categories and how such information is collected should be uniform across the province, and informed by best practices identified by the Anti-Racism Directorate, in consultation with the Ministry of Community Safety and Correctional Services.
- 44. Every police service in Ontario should ensure that their procedures address the accommodation of observant persons of faith.
- 45. Every police service in Ontario should ensure that their procedures provide for special procedures pertaining to strip searches of young persons. These should include providing young persons with the option of having an adult or guardian present, absent exigent circumstances.
- 46. Every police service in Ontario should ensure that their procedures address the accommodation of persons with a disability.
- 47. The Ministry of Community Safety and Correctional Services is mandated to develop and promote programs to enhance professional police practices, standards and training. The ministry should develop guidelines for training specific to strip searches that are informed, in part, by the findings and recommendations contained in this report.

- 48. The Ontario Police College (OPC) should develop a standard training model specifically regarding strip searches that covers all aspects of *R. v. Golden*, along with other relevant jurisprudence. The format should include scenarios and a qualifying test for supervisors, officers and members who are authorized to search a person. The OPC should provide a version of this training through the Canadian Police Knowledge Network, so that more remote police services have ready access to it.
- 49. Every police service in Ontario should incorporate training on strip searches into their annual or biennial training. The training should include a review of all aspects of *R. v. Golden* and other relevant jurisprudence, as well as scenarios and experiential training so that officers practice articulating grounds and conducting a strip search in a variety of situations.
- 50. Every police services board in Ontario should ensure that their policies provide appropriate direction to police services on (a) the creation or modification of procedures to fully address strip searches, and (b) the training respecting strip searches. Such policies should be informed by the contents of this report.

# CHAPTER 1: Search incident to arrest and the *Golden* decision

In 1997, Metropolitan Toronto police officers arrested Ian Golden inside a sandwich restaurant for trafficking cocaine. Following the arrest, officers conducted a patdown search, but did not find weapons or narcotics. An officer took Mr. Golden to a stairwell and undid his pants and pulled them, along with his underwear, away from his body, revealing a plastic wrap containing a white substance protruding from between his buttocks. Mr. Golden hip-checked the officer when he tried to retrieve the plastic wrap. The officer then took Mr. Golden to a seating booth, asked the restaurant patrons to leave, while two other arrested individuals, a restaurant employee and five officers remained inside.

The officers forced Mr. Golden to bend over a table, then lowered his pants to his knees and pulled his underwear down, completely exposing his buttocks and genitalia. The officers made several unsuccessful attempts to remove the package from his buttocks because Mr. Golden continued to clench his muscles. During the officers' attempts, Mr. Golden accidently defecated; however, the package did not dislodge. One of the officers got a pair of rubber dishwashing gloves and again tried to remove the package while Mr. Golden was face down on the floor with another officer holding down his feet. Finally, officers were able to remove the package when Mr. Golden unclenched his muscles. The package contained 10.1 grams of crack cocaine. Mr. Golden was taken to 51 Division, just a two-minute drive from the restaurant.

Mr. Golden was found guilty of possession of a narcotic for the purpose of trafficking. He was sentenced to 14 months in prison. Mr. Golden appealed the conviction on ground that the strip search constituted an unreasonable search and seizure, contrary to section 8 of the charter. The Ontario Court of Appeal dismissed the appeal. Mr. Golden then appealed to the Supreme Court of Canada. The Supreme Court overturned the conviction and acquitted Mr. Golden.<sup>11</sup>

<sup>11</sup> Golden, para 27-35.

*R. v. Golden* is a landmark 2001 Supreme Court of Canada decision on the legality of strip searches conducted by the police as part of a search incident to arrest. Justice lacobucci, writing for the Supreme Court's majority, described the nature of strip searches at paragraph 90:

Strip searches are ... inherently humiliating and degrading for detainees regardless of the manner in which they are carried out and for this reason they cannot be carried out simply as a matter of routine policy. The adjectives used by individuals to describe their experience of being strip searched give some sense of how a strip search, even one that is carried out in a reasonable manner, can affect detainees: "humiliating," "degrading," "demeaning," "upsetting," and "devastating." Some commentators have gone as far as to describe strip searches as "visual rape." Women and minorities in particular may have a real fear of strip searches and may experience such a search as equivalent to a sexual assault. The psychological effects of strip searches may also be particularly traumatic for individuals who have previously been subject to abuse. Routine strip searches may also be distasteful and difficult for the police officers conducting them.<sup>12</sup>

The Supreme Court concluded that strip searches may be justified pursuant to the common law power of search incident to arrest. However, given the nature of such searches, they cannot be conducted as a matter of routine or policy. Instead, reasonable and probable grounds must exist to believe that the strip search is necessary. The Supreme Court said this at paragraphs 98 and 99:

The fact that the police have reasonable and probable grounds to carry out an arrest does not confer upon them the automatic authority to carry out a strip search, even where the strip search meets the definition of being "incident to lawful arrest"... Rather, additional grounds pertaining to the purpose of the strip search are required... [A] strip search is a much more intrusive search and, accordingly, a higher degree of justification is required in order to support

<sup>&</sup>lt;sup>12</sup> Citations omitted from text. See Ibid, para 90 for full citations.

the higher degree of interference with individual freedom and dignity. In order to meet the constitutional standard of reasonableness that will justify a strip search, the police must establish that they have reasonable and probable grounds for concluding that a strip search is necessary in the particular circumstances of the arrest.

In light of the serious infringement of privacy and personal dignity that is an inevitable consequence of a strip search, such searches are only constitutionally valid at common law where they are conducted as an incident to a lawful arrest for the purpose of discovering weapons in the detainee's possession or evidence related to the reason for the arrest. In addition, the police must establish reasonable and probable grounds justifying the strip search in addition to reasonable and probable grounds justifying the arrest.<sup>13</sup>

Even where a strip search may be justified, it must also be conducted in a reasonable manner. The Supreme Court provided important guidance on how and where a strip search may be conducted:

101. In this connection, we find the guidelines contained in the English legislation, P.A.C.E.<sup>14</sup> concerning the conduct of strip searches to be in accordance with the constitutional requirements of section 8 of the charter. The following questions, which draw upon the common law principles as well as the statutory requirements set out in the English legislation, provide a framework for the police in deciding how best to conduct a strip search incident to arrest in compliance with the charter:

- 1. Can the strip search be conducted at the police station and, if not, why not?
- 2. Will the strip search be conducted in a manner that ensures the health and safety of all involved?

<sup>&</sup>lt;sup>13</sup> Citations omitted from text. See Ibid, para 98-99 for citations.

<sup>&</sup>lt;sup>14</sup> Police and Criminal Evidence Act, 1984 (UK), 1984, c.60.

- 3. Will the strip search be authorized by a police officer acting in a supervisory capacity?
- 4. Has it been ensured that the police officer(s) carrying out the strip search are of the same gender as the individual being searched?
- 5. Will the number of police officers involved in the search be no more than is reasonably necessary in the circumstances?
- 6. What is the minimum of force necessary to conduct the strip search?
- 7. Will the strip search be carried out in a private area such that no one other than the individuals engaged in the search can observe the search?
- 8. Will the strip search be conducted as quickly as possible and in a way that ensures that the person is not completely undressed at any one time?
- 9. Will the strip search involve only a visual inspection of the arrestee's genital and anal areas without any physical contact?
- 10. If the visual inspection reveals the presence of a weapon or evidence in a body cavity (not including the mouth), will the detainee be given the option of removing the object himself or of having the object removed by a trained medical professional?
- 11. Will a proper record be kept of the reasons for and the manner in which the strip search was conducted?<sup>15</sup>

<sup>15</sup> *Golden*, para 101.

102. Strip searches should generally only be conducted at the police station except where there are exigent circumstances requiring that the detainee be searched prior to being transported to the police station. Such exigent circumstances will only be established where the police have reasonable and probable grounds to believe that it is necessary to conduct the search in the field rather than at the police station. Strip searches conducted in the field could only be justified where there is a demonstrated necessity and urgency to search for weapons or objects that could be used to threaten the safety of the accused, the arresting officers or other individuals. The police would also have to show why it would have been unsafe to wait and conduct the strip search at the police station rather than in the field. Strip searches conducted in the field represent a much greater invasion of privacy and pose a greater threat to the detainee's bodily integrity and, for this reason, field strip searches can only be justified in exigent circumstances.<sup>16</sup>

The Court suggested at paragraph 103 that, in addition to the guidance it provided, it would be helpful to the police and to the courts if Parliament intervened to clearly prescribe when and how strip searches should be conducted. No such legislative intervention has taken place. Instead, courts rely on the reasoning in *Golden*, including the guidelines identified by the Court.

A number of police services have created procedures on strip searches, based on the *Golden* decision. Not all procedures use the term "strip search." These searches are sometimes referred to as a "complete search," or a "thorough search" to distinguish them from other types of searches. Some police services use numerical "levels" in defining searches. For example, the Toronto Police Service procedures describe four levels of searches, attributing Level 3 to strip searches.

The correlation or lack of correlation between police procedures across the province and the *Golden* decision is discussed later in this report.

<sup>16</sup> Ibid, para 102.



Three additional points arise out of the Golden decision.

First, at paragraph 47, the Supreme Court adopted the following definition of a strip search:

The removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person's private areas, namely genitals, buttocks, breasts (in the case of a female), or undergarments.

The Court distinguished strip searches from less intrusive "frisk" or "pat-down" searches that do not involve the removal of clothing, and from more intrusive body cavity searches that involve a physical inspection of the detainee's genital or anal regions.

It is important to observe that a strip search need not involve the complete removal of the subject's clothing or any nudity, as long as it entails the removal or rearrangement of clothing so as to permit the visual inspection of the subject's private areas <u>or undergarments</u>. It became obvious in the course of this systemic review that some police services have interpreted the term strip search too narrowly, resulting in some instances of non-compliance with the law.

Second, the *Golden* decision determined that it was relevant whether the accused was about to enter into the general population of prisoners or if he or she was only being detained for a short term with little or no chance of interacting with other prisoners. This issue has figured prominently in subsequent jurisprudence as, in a number of instances, individuals arrested for drinking and driving offences have been routinely subjected to strip searches while being held in custody for a short time to allow them to sober up.

Third, any strip search carried out "abusively or for the purpose of humiliating or punishing the arrestee"<sup>17</sup> or in response to belligerent conduct will always be unreasonable.<sup>18</sup> In two or three cases, trial judges have found that the strip search was so motivated.<sup>19</sup>

In a 2010 case, a Toronto man was charged with impaired driving and possession of cocaine in relation to a small amount of cocaine found in his wallet. He was subjected to a strip search. The officer testified that the strip search occurred in a private room with the door slightly ajar. He further testified the search was done respectfully and that the man was at no point completely naked. The man testified to the contrary. He said the door was open six to 10 inches and that he was told to remove all his clothing, squat three times bend over and lift up his testicles. He testified that "the whole event was humiliating." The Ontario Court of Justice judge accepted the man's evidence and that there were no reasonable and probable grounds to conduct the strip search. The court also observed that the officer did not take any notes of the strip search. In the circumstances, the court concluded that the manner in which the search was conducted was contrary to *Golden* and the charges were stayed.<sup>20</sup>

<sup>&</sup>lt;sup>17</sup> Golden, para 95.

<sup>18</sup> R. v. McPhail, 2011 ONCJ 315, para 19. (CanLII), http://canlii.ca/t/fm0hz

<sup>&</sup>lt;sup>19</sup> See Ibid, para 26; R. v. Bonds, 2010 ONCJ 561, page 11-12. (CanLII), http://canlii.ca/t/2dmt0

<sup>&</sup>lt;sup>20</sup> *R. v. Smith*, 2010 ONCJ 137, para 4, 24-30. (CanLII), http://canlii.ca/t/29c88

### CHAPTER 2: **REPORTED UNCONSTITUTIONAL STRIP SEARCHES AFTER THE GOLDEN DECISION**

As part of my systemic review, we examined the reported<sup>21</sup> criminal decisions in Ontario, post-*Golden*, in which the court found that the police or the Canada Border Services Agency (CBSA) performed a strip search in violation of the defendants' section 8 charter rights. We identified 89 such cases between 2002 and December 31, 2018.

Of course, these cases cannot represent all instances in which Ontario police or the Canadian Border Services Agency (CBSA) performed unlawful strip searches. Many criminal charges are withdrawn outright for various reasons, diverted out of the criminal justice system, or stayed as a result of unreasonable delay. Most criminal cases are resolved through a guilty plea to some or all of the charges faced. In those cases, the defendants, who may sometimes be self-represented, may not have considered the constitutionality of any strip search conducted. Conversely, issues surrounding the search may be used to request a reduction in the sentence to be imposed, rather than to support a full legal challenge to the search.

Some obvious or extreme constitutional violations prompt the prosecution to resolve a criminal case in a variety of ways, meaning that potential Charter violations are never litigated. Even where the constitutionality of a strip search has been litigated, the court may choose not to decide the issue. For example, other Charter violations or a complete defence on the merits may make it unnecessary to do so. Some of the court's decisions on strip searches, particularly at the trial level, may also remain unreported. Finally, the court's reasons, in a number of the cases, suggest that the violations identified were unlikely to be "one-offs" or isolated instances; for example, where the court highlights its concerns about training based on evidence of a pattern of unlawful strip searches or obvious deficiencies in an officer's knowledge.

<sup>&</sup>lt;sup>21</sup> Legal cases may be reported or unreported. "Reported" cases are those that have been published by one of the legal reporting services. Not all judicial decisions are reported.

### Table 1: Reported Unconstitutional Strip Search Cases by Police Service

Police Service	Number of Cases	Violation on Grounds	Violation on Manner of Search	Training Comments*
Barrie Police Service	1		1	
Canadian Border Services Agency/RCMP <sup>22</sup>	5	5	1	1
Durham Regional Police Service	6	3	4	1
Greater Sudbury Police Service	1		1	
Halton Regional Police Service	3	3	1	
Hamilton Wentworth Detention Centre <sup>23</sup>	1	1		
London Police Service	1	1		
Niagara Regional Police	1	1	1	
Ontario Provincial Police	8	6	4	1
Ottawa Police Service	2	1	2	1
Peel Regional Police	14	12	6	1
Sarnia Police Service	1	1		
Toronto Police Service	40	36	16	5
Windsor Police Service	1		1	
York Regional Police	4	4	2	
TOTALS	89	74	40	10

\* Cases in which the court expressed concern about the police training being offered on strip searches, based on the evidence heard.

<sup>&</sup>lt;sup>22</sup> The RCMP and the CBSA do not fall within the OIPRD's oversight mandate. However, these cases are included since they occurred in Ontario.

<sup>&</sup>lt;sup>23</sup> The Hamilton Wentworth Detention Centre does not fall within the OIPRD's oversight mandate. However, these cases are included since they occurred in Ontario.

Table 1 organizes the cases by identifying police services that were involved in the charter violations found by the court. It shows that 45 per cent of these cases involved the Toronto Police Service. This is not surprising given the disproportionate number of strip searches conducted by the Toronto Police Service per incident of arrest, a point more fully developed later in this report. It is also apparent that the issues surrounding unconstitutional strip searches are not confined to the Toronto Police Service. Six police services, as well as the Canadian Border Services Agency, were involved in three or more unconstitutional strip searches. The Peel Regional Police and the Ontario Provincial Police were involved in 14 and eight such cases, respectively.

The table also shows that violations related both to the grounds for conducting the strip searches and the manner in which the strip searches were conducted.

Violation Based on the Grounds for the Strip Search	74
Absence of grounds (no other comment)	44
Done routinely	18
Unlawful arrest/arbitrary detention	12
Improper reasons for strip search	2
Crown failed to establish reasons for strip search	1
Violation Based on the Manner of the Strip Search	40
Inadequacy of notes	6
Done in the field with no exigency	10
Lack of privacy	14
Absence of supervisor's authorization	10
Fully undressed	10
More force than required	4
Accused not properly informed	2
Violations Based on Both Grounds and Manner of the Strip Search	25

### Table 2: Basis for Violations Found by Trial Judge

38

Table 2 shows that in 74 cases (83 per cent), the accused's rights were violated based on the absence of, or inadequacy of, grounds justifying a strip search. This represents an alarming number of cases. It is made worse by the fact that in 18 cases, trial judges specifically commented on how the police treated strip searching as a matter of routine.

It is almost as alarming to observe that in 40 cases (45 per cent), strip searches were conducted in an unreasonable manner. Despite the seemingly clear dictates of the *Golden* decision, lack of privacy, removal of all clothing rather than sequential removal and replacement of clothing, inadequate note-taking and the failure to obtain authorization from a supervisor figured prominently in the judicial decisions.

It is also troubling that in 25 cases, the court found that officers both lacked appropriate grounds to perform a strip search <u>and</u> conducted the strip search in an unreasonable manner. A number of judges specifically identified lack of training as an issue raised by the evidence heard before them.

It is obvious that there was no single type of violation that explained court findings. The wide range of violations identified, as well as the numbers involved, support the existence of systemic issues that must be addressed.



## Table 3: Number of Reported Strip Search Cases per Yearsince Golden Decision

Year	Number of Reported Cases
2018	12
2017	7
2016	12
2015	3
2014	7
2013	7
2012	7
2011	3
2010	3
2009	5
2008	2
2007	4
2006	4
2005	4
2004	4
2003	4
2002	1
TOTAL	89

Table 3 organizes reported cases by year of decision. The year of decision may not correspond with the year in which the strip search actually occurred. However, the table does reflect that over the years, there has been a continuous stream of reported cases involving unconstitutional strip searches. Put simply, the issue has not abated despite the passage of 18 years since the *Golden* decision.

			Malat	
Year of Decision	Name of Case	Violation: Grounds	Violation: Manner of Search	Judge Comments on Officer Training
2018	R. v. Gayle	YES		
2018	R. v. Abdelrahim	YES		
2018	R. v. Grant	YES		
2018	R. v. Bruce	YES		
2018	R. v. Boekdrukker		YES	
2017	R. v. Perinpanathan	YES		
2017	R. v. MacPherson		YES	
2016	R. v. Balak	YES	YES	
2016	R. v. Im	YES		Listed as Level 2 search incorrectly; officer did not understand limit of authority.
2016	R. v. Dunwell	YES		Officers did not consider this a strip search.
2016	R. v. Bookal	YES	YES	
2014	R. v. Mamadov	YES		
2013	R. v. Darteh	YES	YES	
2013	R. v. McKay	YES		
2013	R. v. Madray	YES		
2013	R. v. Melo	YES		
2013	R. v. M. (S.) (young person)		YES	
2012	R. v. Carrion-Munoz	YES		

### Table 4: Reported Cases Involving Toronto Police Service

Year of Decision	Name of Case	Violation: Grounds	Violation: Manner of Search	Judge Comments on Officer Training
2012	R. v. A. (Z.) (young person)	YES	YES	
2012	R. v. McGee	YES		Officers had not been apprised of court cases dealing with strip searches.
2012	R. v. Nguyen	YES		
2011	R. v. Ali	YES	YES	
2010	R. v. Smith	YES	YES	
2010	R. v. Muthuthamby	YES		
2009	R. v. Gaeshingtsong	YES		
2009	R. v. Chowdhury	YES		
2009	R. v. Filli	YES		
2009	R. v. Almada	YES		
2009	R. v. Mesh	YES		
2008	R. v. Samuels	YES		
2007	R. v. Jutras	YES		
2006	R. v. Casimir		YES	
2005	R. v. F.N.	YES	YES	
2005	R. v. Sandhu <sup>24</sup>	YES	YES	
2005	R. v. Sandhu	YES	YES	
2004	R. v. Grenke	YES		Officer misunderstood TPS policy.

<sup>24</sup> Two different accused named Sandhu were each subjected to an unconstitutional strip search.

Year of Decision	Name of Case	Violation: Grounds	Violation: Manner of Search	Judge Comments on Officer Training
2004	R. v. N.C. (young person)	YES		
2004	R. v. Jackson	YES		
2003	R. v. S.F. (young person)	YES	YES	
2003	R. v. Clarke	YES	YES	Officers not aware of Golden or Flintoff.

Table 4 focuses exclusively on cases involving Toronto Police Service officers. It shows that these cases involve violations based both on the absence or inadequacy of grounds for the search, and on the unreasonable manner in which the search was conducted. It also shows that these cases have not abated over time.

### **Table 5: Court Dispositions**

<b>Dispositions Granted</b>	Number of Cases
Evidence excluded	35
Stay of proceedings	24
Sentence reductions	9
No remedy	14
Statement involuntary	3
Conviction quashed	2
Not stated <sup>25</sup>	2

<sup>&</sup>lt;sup>25</sup> One of the decisions did not address remedy. This was undoubtedly dealt with in a subsequent decision not currently available to us.

Table 5 organizes the cases by court disposition. It shows that unconstitutional strip searches frequently resulted in, or contributed to,<sup>26</sup> the charges being dismissed or stayed, or reliable evidence being excluded (which also often results in the absence of evidence to support a finding of guilt). In nine cases, the court took the unconstitutional strip searches into consideration in reducing the sentences that might otherwise have been imposed. In several cases, the unconstitutional strip search a finding that the defendant's statement was involuntary, and therefore inadmissible. In summary, the court granted the defendants a remedy in 73 of the 89 reported cases (82 per cent).

Items Seized	Number of Cases
Drugs	18
Clothing (underwear seized)	1
None	70

### Table 6: Items Seized During Strip Search

Table 6 reflects the number of cases in which items were or were not seized during the strip search. No items were seized in 79<sup>27</sup> per cent of the cases. Drugs were seized in 20 per cent of cases. In one instance, underwear was seized based on an allegation that it contained, or potentially contained, gunshot residue relating to a murder investigation. It is instructive that no weapons or items that could be used to facilitate escape were seized in any of these cases, despite safety often being identified as the rationale for these unconstitutional searches.

<sup>&</sup>lt;sup>26</sup> An unconstitutional strip search was not necessarily the only charter violation contributing to the disposition.

<sup>&</sup>lt;sup>27</sup> In some of the cases, it is not stated that nothing was seized during the strip search. However, it can be inferred based on the reasons and the absence of any reference to items seized, that no items were seized.

The data relating to these court cases involving charter violations also reflects that 40 per cent of the cases relate to drinking and driving charges. In every one of these cases,<sup>28</sup> the court found that grounds did not exist to justify a strip search, and in some cases, the manner of search was also implicated. As reflected in Chapter 4, the treatment of those accused of drinking and driving, especially when they must be either held in a cell or with the general population for a short time, raises special systemic issues. The numbers generated by our review of these 89 reported cases support that evaluation.

A number of these cases also involved a requirement that a female remove her underwire bra. In these circumstances, a finding that a strip search was unconstitutional was sometimes accompanied by the judicial comment that this police action was being engaged in as a matter of routine. In Chapter 4, I give special attention to this issue as well.

The information gleaned from the reported cases involving findings of unconstitutional strip searches helped inform the balance of this report. In my view, such judicial findings should not be ignored by the relevant police services.

### **RECOMMENDATION:**

1. Every police service in Ontario, in consultation with the Ministry of the Attorney General and local Crown counsel, should ensure that they are made aware of judicial findings of Charter violations in strip search cases, and proactively take measures to address the issues raised when appropriate. Such measures may involve anything from counselling, guidance, added supervision or training to prevent future violations to disciplinary proceedings in more egregious cases.

<sup>&</sup>lt;sup>28</sup> In *R. v. Uhuangho*, 2018 ONCJ 599 (CanLII), http://canlii.ca/t/httkr, the trial judge did not state that there were no grounds but did find there was no safety concerns, no consideration of alternatives and no authorization for the search.



In 2016, a judge acquitted a woman of drunk driving despite having a blood-alcohol level more than twice the legal limit. A female Peel Regional Police officer unzipped the accused's sweater in view of two male officers during her arrest. The woman testified that she was "embarrassed and mortified." She was wearing a see-through bra and her breasts were exposed on a road side and in the presence of the male police officers. The court found that the police did not establish reasonable and probable grounds to justify the strip search and that the impact on the woman's charter-protected interests was significant.<sup>29</sup>

# CHAPTER 3: police service statistics on strip searches

## THE AVAILABILITY OF STATISTICS

I was interested in attempting to quantify the number of strip searches being conducted in Ontario. I was also interested in a comparative statistical analysis of strip search practices by police services across the province. This prompted me to request that all 53<sup>30</sup> Ontario police services, subject to OIPRD oversight in 2016, provide available statistics on strip searches for a three-year period (2014 to 2016), specifically the number of individuals arrested and the number of individuals strip searched throughout that period.

The majority of services indicated that they did not keep strip search statistics at all. Nor did they have a process to collect such statistics since most of the information sought was only to be found, if at all, in officers' notes. As a result, information could not be extracted in a timely or accurate manner.

A number of police services with fewer than 100 officers provided us with information based solely on the memory of their chief or senior staff. Those services indicated that they rarely conduct strip searches. As a result, they felt confident informing me that either they conducted no strip searches in the relevant time period or only a few in memory. For a number of the strip searches they remembered, they provided anecdotal information about the circumstances surrounding them.

In addition to my request to be provided with statistical information on the number of arrests and strip searches conducted by each police service between 2014 and 2016, I requested all reports and documentation related to each strip search,

<sup>&</sup>lt;sup>30</sup> In October 2017, during the course of this review, Stirling-Rawdon Police Service was disbanded in favour of the Ontario Provincial Police. In February 2018, Midland Police Service was disbanded in favour of the Ontario Provincial Police.

including, but not limited to, any strip search templates or forms used, the arrest reports, officers' notes and any prisoner logs or booking sheets.

For some of the large services that conduct numerous strip searches, we determined that in order to promote timely responses, a more focused request to these services would still provide us with a sufficient sample size to inform our work. For example, we requested one month of case-specific data for each of the three years under examination from Waterloo Police Service and the Ontario Provincial Police, and one week of case-specific data for each of the three years under examination from the Toronto Police Service.

The following table lists each police service, whether it provided requested statistics for 2014, 2015 and 2016, its response regarding its strip search data, if any, and whether the service provided underlying documentation pertaining to their strip searches for the relevant years.

Police Service	Provided Statistics for 2014, 2015 and 2016	Response	Provided Underlying Documentation for 2014, 2015 and 2016
Amherstburg Police Service	Yes	Only one conducted	No
Aylmer Police Service	Yes	One based on memory	No
Barrie Police Service	Yes		Yes
Belleville Police Service	No	Does not track strip searches as there is no requirement to do so	No
Brantford Police Service	Yes		Yes

## Table 7: Police Service Responses to Requests for Statistics on Strip Searches

Police Service	Provided Statistics for 2014, 2015 and 2016	Response	Provided Underlying Documentation for 2014, 2015 and 2016
Brockville Police Service	Yes	No strip searches	No*
Chatham-Kent Police Service	Yes		Yes
Cobourg Police Service	Yes	No strip searches based on memory	No*
Cornwall Community Police Service	Yes	No strip searches	No*
Deep River Police Service	Yes	Does not keep strip search data, but no strip searches based on memory	No*
Dryden Police Service	Yes		Yes
Durham Regional Police Service	Yes		Yes
Espanola Police Service	Yes	Does not keep strip search data, but no strip searches based on memory	No*
Gananoque Police Service	Yes	Does not keep strip search data, but indicated four were conducted each year based on memory	No
Greater Sudbury Police Service	Yes		Yes
Guelph Police Service	No	Strip search data cannot be collected and analyzed	No

### Provided

### Provided

Police Service		Response	
Halton Regional Police Service	No	Strip search data cannot be collected and analyzed	No
Hamilton Police Service	Yes		Yes
Hanover Police Service	Yes	No strip searches based on memory	No*
Kawartha Lakes Police Service (City of)	Yes	No strip searches based on memory	No
Kingston Police	Yes		Yes
LaSalle Police Service	No	Strip search data cannot be collected and analyzed	No
London Police Service	No	Strip search data cannot be collected and analyzed	No
Midland Police Service	Yes	No strip searches	No*
Niagara Regional Police Service	No	Strip search data cannot be collected and analyzed	No
North Bay Police Service	No	Does not keep strip search data	No
Ontario Provincial Police	Yes		Yes
Orangeville Police Service	No	Strip search data cannot be collected and analyzed	No
Ottawa Police Service	Yes		Yes

Police Service	Provided Statistics for 2014, 2015 and 2016	Response	Provided Underlying Documentation for 2014, 2015 and 2016
Owen Sound Police Service	Yes		Yes
Peel Regional Police	Yes**		Yes
Peterborough Police Service	No	Strip search data cannot be collected and analyzed	No
Port Hope Police Service	Yes	No strip searches – manual review and based on memory	No*
St. Thomas Police Service	Yes	No strip searches based on memory	No*
Sarnia Police Service	No	Strip search data cannot be collected and analyzed	No
Saugeen Shores Police Service	No	Strip search data cannot be collected and analyzed	No
Sault Ste. Marie Police Service	Yes		Yes
Shelburne Police Service	No	Strip search data cannot be collected and analyzed	No
Smiths Falls Police Service	No	Strip search data cannot be collected and analyzed	No
South Simcoe Police Service	No	Strip search data cannot be collected and analyzed	No
Stirling-Rawdon Police Service	No	Does not keep strip search data – no strip search based on memory	No*

Police Service	Provided Statistics for 2014, 2015 and 2016	Response	Provided Underlying Documentation for 2014, 2015 and 2016
Stratford Police Service	Yes		Yes
Strathroy- Caradoc Police Service	Yes		Yes
Thunder Bay Police Service	No	Strip search data cannot be collected and analyzed	No
Timmins Police Service	Yes		Yes
Toronto Police Service	Yes		Yes
Waterloo Regional Police Service	Yes		Yes
West Grey Police Service	No	There is no data	No
West Nipissing Police Service	No	Strip search data cannot be collected and analyzed	No
Windsor Police Service	Yes		Yes
Wingham Police Service	Yes	No strip searches conducted	No*
Woodstock Police Service	No	Does not keep strip search data	No
York Regional Police	No	Prior to November 20, 2016, strip search data could not be collected and analyzed	No

\* No strip searches recorded.
\*\* Peel Police Service started tracking strip searches in October 2015.



Of the 53 police services canvassed, 62 per cent provided some statistical information about what, if any, strip searches were conducted during the relevant time period, although 17 per cent of those police services provided such information based on memory alone. Thirty-eight per cent of police services did not, or were unable to, provide any such statistical information.

Thirty-six per cent provided us with underlying documentation. Leaving out the 11 police services that reported no strip searches during the relevant time period, 43 per cent of police services did not provide us with such documentation.

Examining the underlying case-specific documentation enabled us to identify best practices in some police services, as well as obvious systemic issues. The latter included officers' failure to adequately document, or document at all, the strip searches they conducted, authorized or supervised. Further, the examination of this underlying documentation highlighted inconsistent procedures and how procedures are differently interpreted or applied as between police services. These systemic issues are addressed in Chapter 4 of this report. 54

# THE DEFICIENCIES

My requests for statistical information and the underlying documentation exposed at least four deficiencies in how and whether such information is kept and analyzed.

First, the majority of services were unable to provide the OIPRD with all the information requested. They reported that while strip search information may be recorded in officers' notebooks, it is not inputted into a computer system. Four large police services (Halton Regional, London, Niagara Regional, and York Regional) provided no statistics or underlying case-specific documentation on strip searches. Peel Regional was only able to provide limited underlying documentation.

Second, even if it were feasible to review all relevant notebook entries, officers frequently do not document in their notes or otherwise, in any adequate way, or at all, the types of searches conducted of suspects or accused upon detention or arrest. Practices differ between police services and between officers within the same police services. Some police services require additional forms to be completed when a strip search is authorized or conducted; most do not.

Third, different police services and officers categorize searches differently. In our review, we found that police services do not work with a consistent definition of a strip search. Some services had definitions that were over-inclusive, and included the search of hair, ears, mouth and between fingers or toes. In those cases, a service may have appeared to conduct more strip searches than other services in Ontario because they have been over-inclusive.

More frequently, true strip searches will be under-reported or inconsistently reported, due to officers' misunderstandings of what constitutes a strip search. This may not be a result of definitional differences, but a lack of training or application of that training. For example, the evidence available to us established that some officers appear to believe that if they are removing an arrestee's clothing due to threat of suicide or for officer safety, they do not need to document it as a strip search.

It is impossible to quantify how many strip searches are being missed due to officer misunderstanding of what constitutes a strip search. This not only has an impact on the quality of collected statistics, but it may also mean that front-line officers and supervisors are failing to fulfill their obligations regarding when and how strip searches are conducted.

Fourth, Ontario police services have not generally kept race-related statistics of their interactions with members of the public resulting in strip searches. This significantly impairs the ability of oversight agencies and others to conduct evidence-based (rather than speculative) evaluations of the role that race plays in whether and how strip searches are conducted. This type of evaluation is long overdue. The role that race plays in policing decisions has been increasingly scrutinized – and legitimately so – in recent years.

For example, the concerns about the impact of race on whether someone is likely to be stopped by police on the street to collect personal information (involving either "street checks" or "carding") have led to a new Ontario regulation governing police-public interactions. The regulation, among other things prohibits a police officer from attempting to collect identifying information about an individual from the individual if:

- Any part of the reason for the attempted collection is that the officer perceives the individual to be within a particular racialized group unless:
  - o The officer is seeking a particular individual
  - o Being within the racialized group forms part of a description of the particular individual or is evident from a visual representation of the particular individual

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- o The officer has additional information, in addition to information about the particular individual being in a racialized group that may help to identify the individual or narrow the description of the individual
- The attempted collection is done in an arbitrary way.<sup>31</sup>

The Honourable Michael Tulloch of the Ontario Court of Appeal conducted a review of the new Regulation on the collection of identifying information by police in certain circumstances (street checks/carding). His analysis of pre-regulation street check data conducted for his review supported findings that across Ontario, Black, Indigenous and people from other racialized communities were more likely to be carded.<sup>32</sup>

It should be no surprise that the same concerns have been raised about the role that race plays in the decision whether to strip search an individual. These concerns include whether a disproportionate number of racialized people are strip searched, and whether race determines, in otherwise similar circumstances, whether someone is or is not subjected to a strip search.

I received race-related information pertaining to strip searches from the Toronto Police Service, Ontario Provincial Police and Durham Regional Police Service. However, the vast majority of police services do not collect race-related information pertaining to strip searches.

There has been an intense debate over the years over whether the police should keep race-related statistics. There is now heightened recognition that such statistics need to be kept. A recommendation that race-related statistics be kept respecting strip searches is consistent with that recent trend.

In fairness, there was some movement to improve the collection of statistical data pertaining to strip searches during my systemic review. A number of Ontario police services have recently moved to electronic record keeping for prisoners. As a result, they were better able to provide me with at least some of the requested

<sup>&</sup>lt;sup>31</sup> O. Reg. 58/16: Collection of Identifying Information in Certain Circumstances – Prohibition and Duties, under the Police Services Act, 1990, section 5.1.

<sup>&</sup>lt;sup>32</sup> Tulloch, Michael H. "*Report of the Independent Street Checks Review*." Toronto, ON: Queen's Printer for Ontario, 2018, 44.

information. As well, my requests for statistics caused some police services, including the Barrie Police Service, LaSalle Police Service, Peterborough Police Service, West Nipissing Police Service, Woodstock Police Service and York Regional Police, to recognize deficiencies in their data collection practices. They outlined steps that they planned to take to improve their existing practices.

### **RECOMMENDATIONS:**

- 2. All police services in Ontario should ensure that they keep accurate statistics of the number of persons they arrest or detain, the number of persons strip searched (based on a uniform interpretation of what a strip search entails, as set out in this report's procedures template, and in accordance with binding jurisprudence) and the justifications provided for such strip searches.
- 3. The statistics should also identify, among other things, the race of the person subjected to such a strip search.
- 4. Statistics pertaining to the number of persons arrested and number of persons strip searched, including race-related information, should be made available to the public annually. Any public report should not contain information that might lead to the identification of the persons who were the subject of the searches.
- 5. Electronic record-keeping greatly facilitates the collection of these statistics. Police services should continue to move to implement electronic record-keeping to enable, among other things, accurate and timely access to statistics on the number of arrests and strip searches conducted and facilitate access to case-specific information pertaining to individual strips searches.

### INADEQUACY OF DATA ON THE EFFECTIVENESS OF STRIP SEARCHES

Up to this point in the report, I have described the deficiencies in existing statistics pertaining to the number of strip searches occurring, and in the underlying documentation pertaining to those searches. An important related issue arises out of the inadequacy of existing data on the effectiveness of strip searches.

Our review of case-specific documentation revealed that officers do not consistently document whether any items were found and/or removed during the strip searches they conducted. They may also fail to differentiate between what was found, if anything, during a frisk or pat-down search as opposed to the strip search that followed. This pertains to evidence of a crime discovered during a search, which one would expect officers to be regularly recording, especially if the evidence relates to the offence for which the searched individual has been arrested. It also pertains to items found and/or removed for the safety of officers, the arrested individuals or others.

The Toronto Police Service (TPS) provides officers with a Level 3 and 4 search template form that must be completed for all Level 3 and 4 searches. The form contains areas for officers to fill out the details of the search, authority and justification for the search, transgender person-specific details and items found during Level 3 and 4 searches. The form clearly states that officers are only to include items found during a Level 3 or 4 search (strip search or body cavity search).

In our review of TPS documentation for the three-year period examined (one week from each year 2014 to 2016), officers noted that items were found in 307 cases. This represents approximately 43 per cent of the total strip searches the TPS reported conducting during the representative time period.

Our analysis of the underlying documentation suggested that TPS officers found items of evidence or items concealed in underwear or body crevasses during only 47 (representing 15 per cent) of the 722 Level 3 strip searches we examined. We found that in 206 of those 307 cases (representing 94 per cent), items noted as having been found during the strip search appeared to have actually been found (or likely were found) during the frisk or pat-down. TPS officers frequently indicated that items such as belts, shoelaces and drawstrings that "could be used for injury or escape" were found during the strip search. Typically, these would not be items that are identified as a result of the strip search itself.

TPS's own statistical reports show that officers found evidence in 2.5 per cent of Level 3 searches in 2014 and in 2.7 per cent of searches in both 2015 and 2016.<sup>33</sup>

Following a TPS review of the practice of conducting Level 3 searches, a Routine Order from the Office of the Chief of Police, dated January 26, 2015, was circulated. It stated, among other things, that "[t]he "Item(s) Found during Search" section of the template is meant to capture items found and seized specifically as a result of the search. Items that do not require a Level 3 or 4 search in order to be seized (e.g. belts, shoelaces, combs, keys) should be captured in the Versadex property management module under prisoner's property.

Despite this order, our review of documentation from 2015 and 2016 showed little to no change in officers documenting belts, shoelaces and jewelry as items found during a strip search. This made the accuracy or usefulness of the strip search forms questionable.

In comparison, many other services generally only listed items that were found during the strip search: for example, syringes, shards of glass, razor blades and drug evidence.

As already indicated, the majority of police services, including some of the large services, did not provide us with case-specific documentation. Based on the police service documentation we did receive, my review team set out to compare

<sup>&</sup>lt;sup>33</sup> Toronto Police Service. "2016 Annual Statistical Report." Toronto Police Service Website. http://www.torontopolice.on.ca/publications/files/reports/2016statsreport.pdf

the total number of strip searches conducted by a police service, with the number of occasions that officers noted finding an item that we could confirm was found, or could only have been found, during an actual strip search – as opposed to a frisk or pat-down search. This exercise proved futile, as it was not possible, based on existing documentation, to obtain precise numbers for occasions where items of evidence were found during a strip search.

We were only able to make rough approximations. A couple of small police services found items in about 60 per cent of their strip searches. Otherwise, police services found items in anywhere from four to 35 per cent of their strip searches. At the very least, that very broad variability invites heightened scrutiny of the effectiveness of strip searches provincewide.

To be clear, a strip search may be fully warranted and necessary, whether it ultimately results in items being found and/or removed. However, the inadequacy of existing data on what was truly discovered as a result of strip searches otherwise undiscoverable through less intrusive searches, limits the ability to assess the effectiveness of such searches, and to identify best practices moving forward.

### **RECOMMENDATIONS:**

- 6. Every police service in Ontario should ensure that statistics pertaining to strip searches include accurate and complete information on the nature and number of items found and/or removed as a result of such strip searches. These statistics should be electronically accessible.
- 7. The training for police officers respecting strip searches should include, as a component, how to accurately document the items found and/or removed during a strip search, and why any such items were removed, as well as the importance of distinguishing between the types of search that resulted in the items being found and/or removed.

## WHAT THE AVAILABLE STATISTICS TELL US

Although the available statistics are deficient for the reasons already indicated, they do assist me in drawing certain conclusions, especially when coupled with other information available to me.

Most importantly, the existing statistics tell us that police services report great variation in the number and frequency of strip searches they conduct. These variations are especially pronounced when comparing the Toronto Police Service and other Ontario police services. Toronto Police Service strip search numbers easily represent the vast majority of strip searches conducted in the entire province each year.

Year	Arrest Count	Strip Searches
2014	46,363	16,760
2015	46,637	20,261
2016	47,050	17,654

### Table 8: Toronto Police Service Arrest Count and Number of Strip Searches<sup>34</sup>

It is also instructive to compare existing statistics for services with more than 400 police officers. These represent the largest services in the province.

<sup>&</sup>lt;sup>34</sup> Toronto Police Service. "2013 Annual Statistical Report"; "2017 Annual Statistical Report." *Toronto Police Service Website*. http://www.torontopolice.on.ca/publications/files/reports/2013statsreport.pdf http://www.torontopolice.on.ca/publications/files/reports/2013statsreport.pdf

### Table 9: Police Services with More than 400 Officers

	Total Strip Search Rate		
Service Name	2014	2015	2016
Durham Regional Police Service	0.63	0.54	0.79
Halton Regional Police Service	-	-	-
Hamilton Police Service	0.93	0.92	0.94
London Police Service	-	-	-
Niagara Regional Police Service	-	-	-
Ontario Provincial Police	0.75	0.77	0.57
Ottawa Police Service	0.61	0.72	0.38
Peel Regional Police*	-	-	0.77
Toronto Police Service	42.62	43.44	37.52
Waterloo Regional Police Service**	-	-	-
Windsor Police Service	1.0	0.62	0.23
York Regional Police	-	-	-

\* Peel Police Service only started to track its strip searches in October 2015.

\*\* Waterloo Regional Police Service began separating the statistics for "thorough searches" from its strip searches in October 2016. Waterloo reported 296 strip searches from October to the end of 2016.

Services that do not show strip search rates informed us that they had no means of tracking the number of strip searches conducted by their members.

In addition to Toronto Police Service, five of the 12 services with more than 400 officers were able to provide statistics for strip searches conducted in 2014, 2015 and 2016. All of these five services reported strip search rates of less than one per cent of all arrests made. Peel Regional Police Service was only able to collect statistics for 2016. It, too, reported strip search rates of less than one per cent of all arrests. Halton Regional, London, Niagara Regional and York Regional Police indicated that they were unable to collect statistics pertaining to their strip searches without being provided with specific case numbers.

Our analysis of the underlying documentation makes it clear that the disparity between Toronto Police Service rates and those of other large police services cannot be explained simply by differences in methodology or definition. This data, together with our examination of case-specific documents, overwhelmingly support the view that the Toronto Police Service is, very much, an "outlier" – and that they conduct far too many strip searches.

The Toronto Police Accountability Coalition (TPAC) made a submission focused on the Toronto Police Service and the work done by the TPAC to promote greater accountability for unneeded strip searches. TPAC submitted that the rate of strip searches conducted by the Toronto Police Service on arrested individuals is very high, and that an appropriate rate of prisoners who are strip searched should be closer to five per cent.

While this submission was helpful in identifying the problem to be addressed, I am not inclined to the view that an artificial guideline should be used. A "five per cent" guideline would represent a significant increase in strip searches for some police services.

The inability of four large police services to provide us with any relevant statistics is telling. It is incompatible with transparency and accountability, and severely undermines their ability to effectively promote best practices, and adjust their own procedures and training as needed.

In 2008, Ottawa Police Service officers stopped a woman walking on the street in the early morning hours, after they saw her drinking from a beer bottle. They questioned her, checked her information and told her to go home. Initially she walked away, but returned to ask the officers why they stopped her. They told her to go home and she continued to question them. Officers then arrested the woman for being intoxicated in a public place.

At the police station, she was searched forcefully and aggressively; she was kneed in the back and had her hair pulled back and her face shoved forward. A male police sergeant used a pair of scissors to cut the back of her shirt and bra and then inspected her front torso. She was left half naked in a cell for more than three hours, having soiled her pants, before she received what is called a blue suit.

All this was caught on video. In *R. v. Bonds*, the Ontario Court of Justice found that the arrest and search were both unlawful. The search was undertaken with male officers present, there was no reasonable explanation for the male sergeant's actions in cutting the woman's shirt and bra off. Nor was there a reason, apart from vengeance and malice to have left the woman half naked in a cell. The judge stayed the proceedings.<sup>35</sup>

In 2011, the Ottawa Police Service reviewed its existing procedures for cellblock searches and developed a strip search template. This review was triggered by public concerns around the care and handling of people going through Ottawa Police Service's central cellblock, and stemmed from two cases, one of which was highly publicized. The review of cellblock operations generated a report, *Ottawa Police Service's Review of Cellblock Operations* released in 2011. The report acknowledged that "[a]ddressing such concerns thoroughly, transparently and without delay is critical. Failing to do so jeopardizes the confidence that the public places in the Ottawa Police Service."<sup>36</sup>

<sup>35</sup> Bonds, page 11-12.

<sup>&</sup>lt;sup>36</sup> Ottawa Police Service. "Ottawa Police Service Review of Cellblock Operations Final Report." Ottawa. June 11, 2011, p. 4. http://ottawa.ca/calendar/ottawa/citycouncil/opsb/2011/06-27/item2atta.htm

In our review of the underlying documentation on strip searches from the Ottawa Police Service – including our examination of individual cases – we found that in a high proportion of cases, officers appeared to provide detailed, well-articulated grounds for the strip searches they conducted.

	Strip Search Rate		
Service Name	2014	2015	2016
Barrie Police Service	0.66	0.6	0.41
Brantford Police Service	1.01	0.47	0.24
Chatham-Kent Police Service	.32	1.5	.97
Guelph Police Service	-	-	-
Greater Sudbury Police Service	-	5.23	5.64
Kingston Police	1.36	0.85	0.59
Peterborough Police Service	-	-	-
Sarnia Police Service	-	-	-
Sault Ste. Marie Police Service	0.13	0.04	0.17
Thunder Bay Police Service	-	-	-

### Table 10: Services with 100 to 400 Officers

Ten police services fell within the category of medium-sized services. Four of the services were unable to provide us with any relevant statistics: Guelph, Peterborough, Sarnia and Thunder Bay. We have already identified the problems inherent in not having these statistics available. The Greater Sudbury Police Service was able to provide statistics for two of the three years requested. The remaining six medium-sized police services provided statistics for all three years requested.

With one exception, the rates reported by the medium-sized police services ranged between 1.5 per cent and 0.04 per cent. The one exception was the Greater Sudbury Police Service. It reported rates of 5.23 per cent in 2015 and 5.64 per cent in 2016. However, in fairness, our analysis of the underlying documentation showed that the service has a detailed strip search form that officers appeared to have filled out in appropriate detail in a high proportion of cases. A significant number of strip searches appeared to relate to suicide concerns, prompting the step of having the arrested person wear a gown.

	Strip Search Rate (per cent)		
Service Name	2014	2015	2016
Amherstburg Police Service	.50	0	0
Aylmer Police Service	-	-	-
Belleville Police Service	-	-	-
Brockville Police Service	0	0	0
Cobourg Police Service	0	0	0
Cornwall Community Police Service	0	0	0
Deep River Police Service	0	0	0
Dryden Police Service	.16	.53	0
Espanola Police Service	0	0	0
Gananoque Police Service	1.86	1.85	1.92
Hanover Police Service	0	0	0
Kawartha Lakes Police Service	-	-	2.9
LaSalle Police Service	-	-	-
Midland Police Service	0	0	0

### Table 11: Services with Fewer than 100 Officers

	Strip Search Rate (per cent)		
Service Name	2014	2015	2016
North Bay Police Service	-	-	-
Orangeville Police Service	-	-	-
Owen Sound Police Services	0	.26	.12
Port Hope Police Service	0	0	0
St. Thomas Police Service	0	0	0
Saugeen Shores Police Service	-	-	-
Shelburne Police Service	-	-	-
Smiths Falls Police Service	-	-	-
South Simcoe Police Service	-	-	-
Stirling-Rawdon Police Service	0	0	0
Stratford Police Service	0.72	0.36	0.43
Strathroy-Caradoc Police Service	0.66	0.65	0.35
Timmins Police Service	0.06	0.11	0
West Grey Police Service	-	-	-
West Nipissing Police Service	-	-	-
Wingham Police Service	0	0	0
Woodstock Police Service	-	-	-

A significant number of small-sized police services did not have any system to appropriately document and report on strip searches. Although it is important that all police services properly document strip searches, it is certainly more understandable that existing data is deficient for these police services, given the very low number of strip searches they apparently conduct. A number of small services, responding to our request, were only able to provide information anecdotally, indicating that their officers had conducted zero to five strip searches over the last 10 years.

In summary, the deficiencies in the collection of statistics and underlying documentation pertaining to strip searches prevented a full comparative analysis among services across the province. As well, the inability of many services to provide any statistics about strip searches prevented us from providing a firm number as to the number of strip searches conducted in the province every year. The data provided did permit us to safely conclude that well over 22,000 strip searches likely took place in each of the years examined, and that the majority of those strip searches were conducted by the Toronto Police Service.

Based on the totality of the evidence available, I have concluded that this represented a significant overuse of police strip search powers in Ontario. As well, based on the wealth of other information available, including our examination of many individual strip search occurrence reports, and reported judicial decisions, I have concluded that there is an unacceptable disparity between how and whether various police services in Ontario conduct strip searches. I have already made recommendations that such statistics should be kept and be publicly accessible. The collection of accurate, uniform and comprehensive statistics on strip searches across Ontario will enable police services, the government and oversight agencies to more easily compare existing practices, identify continuing concerns and rectify them.

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Effective oversight and accountability must enlist adequate statistics in an arsenal of tools (including consistent, comprehensive policies and procedures, effective training and the proper documentation of strip searches and their authorization) to be used to ensure that strip searches are only done when needed, and that they are done in accordance with the law.

### **RECOMMENDATION:**

8. Police services, government and oversight agencies should draw upon the accurate, uniform and comprehensive statistics to be collected by police services across Ontario to inform existing and best practices, as well as the need for education and training, identify areas of continuing concern, and take measures to rectify poor practices and ensure accountability.

# CHAPTER 4: police service procedures on strip searches

Every police service in Ontario has procedures that in some way cover strip searches. No service has stand-alone procedures regarding strip searches. Strip search procedures are found within procedures pertaining to a range of related issues: for example, within a "Search of Persons" or "Prisoner Care and Control" procedure document. Most of the existing procedures largely follow the Search of Persons guideline in the Ministry of Community Safety and Correctional Services' (MCSCS) Policing Standards Manual.

While the Policing Standards Manual provides police services with basic guidance, it does not articulate, in detail, the responsibilities of police service members in conducting strip searches. Equally important, it was last updated in 2000, prior to the decision of the Supreme Court of Canada in *R. v. Golden*. The fact that officers continue to misunderstand or fail to comply with their obligations in conducting, authorizing or supervising strip searches, makes clear the necessity for comprehensive and consistent procedures across Ontario. Services should ensure that their strip search procedures are detailed enough to provide officers with clear direction for a variety of situations that may arise. These procedures should also be reviewed regularly and updated to be consistent with current judicial findings and to inform officer education and training.



# THE POLICING STANDARDS MANUAL

Pursuant to the Police Services Act, the Solicitor General (the Minister of Community Safety and Correctional Services) is responsible for monitoring Ontario police services to ensure that adequate and effective policing services are provided at the municipal, regional and provincial levels and for issuing directives and guidelines on policy matters. The Policing Standards Manual explains the standards Ontario's police must follow and provides guidelines on how services should follow the standards that are contained within it.

MCSCS is responsible for writing and updating the Policing Standards Manual. As already indicated, this was last done in 2000.

The preamble in the Policing Standards Manual states that, among other things, the guidelines set out the ministry's position in relation to policy matters; provide recommendations for local policies, procedures and programs; and promote professional police practices, standards and training. It also states that the guidelines are one of the primary tools to assist police services boards, chiefs of police, police associations and municipalities with their understanding and implementation of the Police Services Act and its regulations, including the Regulation on the Adequacy and Effectiveness of Police Services (The Police Adequacy Standards Regulation). The preamble points out that as the guidelines are advisory in nature, police services boards, chiefs of police, police associations and municipalities when addressing compliance with the act and its regulations.

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The Police Adequacy Standards Regulation requires a police services board to have a policy on search of persons. It also requires the chief of police to establish procedures and processes in respect of the search of persons.

The Search of Persons Guideline (LE-012) contained in the Policing Standards Manual provides a sample police services board policy that states that the chief of police will:

- a) Establish procedures that address:
  - i. the compliance by members of the police service with the legal, constitutional and case law requirements relating to when and how searches of persons are to be undertaken
  - ii. the circumstances in which an officer may undertake a search of person
  - iii. frisk/field searches
  - iv. strip/complete searches
  - v. body cavity searches
  - vi. consent searches
  - vii. the supervision of searches of persons
  - viii. the documentation of searches of persons
- b) Ensuring that officers and other members as appropriate are kept informed of changes in the law relating to the search of persons

The guideline also provides guidance on the procedures that chiefs of police must establish relating to the search of persons:

- 1. Every police service's procedures on the search of persons should:
  - a) require an officer when undertaking a search of person to comply with legal, constitutional and case law requirements
  - b) address the circumstances in which an officer may undertake a search of person
  - c) set out the procedures for undertaking:

#### i. frisk/field searches

- ii. strip/complete searches, including:
  - the circumstances under which a strip/complete search may be conducted
  - the circumstances when a strip/complete search must be reported
  - the circumstances, if any, where the permission of a supervisor must be obtained before a strip/complete search is conducted
  - a requirement against conducting a strip/complete search while any person is present who is not a member of a police service, or whose attendance is not appropriate or required in the circumstances, unless safety requirements dictate otherwise
  - that a search be conducted by a member of the same gender as the person to be searched, unless safety requirements dictate otherwise
  - that a search be conducted in a place in which the privacy of the person can be reasonably assured, unless safety requirements dictate otherwise
  - that the person be encouraged to remove their own clothing, unless safety requirements or destruction of evidence issues dictate otherwise
  - that the search be conducted in a manner which avoids unnecessary body contact
- iii. body cavity searches, including:
  - that such searches be conducted in private by a qualified medical practitioner and other medical staff as required, and in the presence of a member of the police service of the same gender as the person to be searched
  - · operational responsibility for authorizing such a search

#### iv. consent searches

- d) address the search of a young person and a person with a disability which affects communication or comprehension
- e) require that the results of all searches be documented
- 2. Every chief of police should ensure that the members who perform search of persons are kept informed of changes in the law with respect to the search of persons<sup>37</sup>

In addition, guideline LE-016 provides police services and police services boards with a sample policy on prisoner care and control. In particular, this guideline states that the officer-in-charge/supervisor or designate should ensure that regular prisoner visual and physical security checks are performed and recorded.

In April 2007, MCSCS provided an All Chiefs Memorandum (#07-0037) to all police services to remind them of the key requirements of the Police Adequacy Standards Regulation. The memorandum highlighted that section 29 of the Regulation requires a police services board to have a policy on search of persons as well as prisoner care and control, and that clauses 13(1)(h) and (l) require the chief of police to establish procedures and processes in respect of the search of persons and prisoner care and control. It also reminded them that guidelines already exist to assist them in meeting these requirements.<sup>38</sup>

As the Policing Standards Manual points out, the sample policies and guidelines are advisory alone. Police service boards, chiefs of police, police associations and municipalities may also consider comparable equivalents when addressing compliance with the act and its regulations.

Police services boards and services across the province have heavily relied upon the Policing Standards Manual to create their own policies and procedures. Many use the language provided in the manual verbatim.

<sup>&</sup>lt;sup>37</sup> Ministry of the Solicitor General. *Policing Standards Manual (2000)*, Search of Persons (LE-012). Ontario Ministry of the Solicitor General, February 2000.

<sup>&</sup>lt;sup>38</sup> Ministry of Community Safety and Correctional Services email correspondence with the OIPRD, Mar. 28, 2018.



There are several shortcomings arising out of the current content of the Policing Standards Manual as it relates to strip searches, and its use by police service boards and police services to create policies and procedures. First, as already indicated, the Search of Persons Guideline must be updated to reflect existing jurisprudence, including, but not limited to, the decision of the Supreme Court of Canada in *R. v. Golden*.

Second, our review has revealed that police services across the province have adopted procedures that provide uneven and at times inconsistent direction to their officers on what constitutes a strip search, and when and how it should be conducted, authorized or supervised. There will obviously be justifiably differences in local policing practices, based on the availability of human resources, environmental, geographical and other factors. The challenge is to create procedures that appropriately take into consideration local circumstances, but nonetheless remain compatible with existing jurisprudence and our values as a society. As reflected in the further analysis contained in this part of my report, that challenge has not been fulfilled in Ontario – indeed, we are a considerable distance away. The Search of Persons Guideline could provide much greater assistance in enabling police service boards and police services to develop compatible policies, procedures and practices across the province. There is no valid reason why a search recognized and treated as a strip search in Toronto should not be recognized and treated as a strip search in North Bay or London or Ottawa.

In *R. v. Golden*, the Supreme Court of Canada suggested that it would be helpful to police if Parliament intervened to clearly prescribe when and how a strip search should be conducted. Indeed, Toronto Police Service's own procedure on search of persons states: "The Toronto Police Service agrees with the courts that clear legislative prescription as to when and how strip searches should be conducted would be of assistance to the police and to the courts."<sup>39</sup>

There is currently no indication that Parliament will amend the Criminal Code to more specifically address strip searches. Given my Ontario-based mandate, and the focus of this systemic review, I am not inclined to make a recommendation for changes to the Criminal Code in any event. In fact, a compelling case can be made for the proposition that the law on strip searches is better developed through the jurisprudence, rather than statutory amendment, coupled with greater guidance provided through the Policing Standards Manual.

In March 2018, MCSCS advised the OIPRD that the ministry has begun a process to transform the legislation governing policing in Ontario. This included developing regulations to operationalize the Police Services Act, 2018 (created by the Safer Ontario Act, 2018), including modernizing the requirements of adequate and effective policing. As part of the development of regulatory standards, the ministry indicated it would review all the guidelines provided under the Policing Standards Manual, including LE-012, to ensure they were modern, and reflected the requirements of constitutional and case law.<sup>40</sup>

Although a change in provincial government resulted in revocation of the Safer Ontario Act, 2018, the need to modernize existing regulatory standards and guidelines for police service boards and services remains.

<sup>&</sup>lt;sup>39</sup> Toronto Police Services Policy & Procedure Manual 01-02 Search of Persons

<sup>&</sup>lt;sup>40</sup> Ministry of Community Safety and Correctional Services email correspondence with the OIPRD, Mar. 28, 2018.

#### **RECOMMENDATIONS:**

- 9. The Ministry of Community Safety and Correctional Services should update the Policing Standards Manual, and most particularly the Search of Persons Guideline to reflect existing jurisprudence, including but not limited to the decision of the Supreme Court of Canada in *R. v. Golden*.
- 10. The Search of Persons Guideline should provide much greater assistance in enabling police service boards and police services to develop compatible policies, procedures and practices respecting searches across the province. This assistance should include a clear definition of a strip search (drawn from the *Golden* decision and as set out in this report), clear demarcation between strip searches and frisk, pat-down or field searches, on the lower end of the spectrum of searches, and body cavity searches at the higher end of the spectrum. It should also include greater specificity around whether and how strip searches are conducted, authorized or supervised. Its content should be informed by the recommendations in this report.

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# ANALYSIS OF PROCEDURES RELATING TO STRIP SEARCHES

What follows is a topic-by-topic analysis of the content of existing procedures relating to strip searches, and how the issues under these topics might be better addressed. This analysis and the related recommendations, along with a recommended template for a strip search procedure in Appendix A, are designed to assist all Ontario police services in creating, updating or modifying their existing procedures relating to strip searches. They are also designed to inform the content of a new Search of Persons Guideline or regulations to be created by MCSCS.

For clarification, I elaborate upon a point made earlier in this report. First, the Search of Persons Guideline contained in the Policing Standards Manual distinguishes between the "policies" to be created by police service boards and the "procedures" to be established by police chiefs for their police services. At the risk of oversimplification, the guideline contemplates that boards will create "policies" on the topics which are to be addressed in police service "procedures" (e.g., procedures on strip searches). Police chiefs will create the detailed "procedures" on those topics. Not infrequently, those "procedures" are also referred to as "policies" or "policies and procedures," contributing to some confusion. In this report, my prime focus is on the procedures established by police chiefs or the Commissioner of the OPP. To avoid confusion, I refer to them as "procedures" throughout this report. However, it is also important that police services boards develop policies to ensure their services have appropriate procedures in place. In my view, this forms part of the statutory obligation of police service boards to ensure adequate and effective policing. Second, this systemic review is devoted exclusively to strip searches. References to other types of searches or the management of persons in custody are only made as is necessary to explain my findings and recommendations on strip searches. However, as indicated earlier, police services do not have free-standing procedures on strip searches. They are integrated with more inclusive search procedures or with prisoner management procedures.

Police services and boards may choose to create free-standing policies and procedures on strip searches given the concerns raised about their use and the desirability for detailed policies and procedures on point. The template I have created is free-standing. However, police service boards and police services may also continue to integrate strip search policies and procedures with more inclusive policies and procedures so long as the updated content adequately addresses the issues identified in this report.

# **DEFINITIONS OF STRIP SEARCHES**

MCSCS's Search of Persons Guideline contains no definition of a strip search. It refers to three types of searches of persons: "frisk/field searches," "strip/complete searches" and "body cavity searches." It provides no guidance to police services as to what the term "strip/complete search" means. Nor does it provide guidance on whether the term "strip search" or "complete search" or alternative terms should be used in policies and procedures. As a result, the terms used to describe a "strip search" vary as between police services. Some police services provide no definitions for a strip search or comparable terms. Others provide definitions that are incomplete or inconsistent with the *Golden* decision. What follows is a description of how strip searches are described and defined across the province.

# Table 12: Terms Used to Describe Strip Searches

Terminology	Number of services
Strip Search	27
Complete/Strip Search	9
Complete Search	8
Thorough Search	6
Detailed Search	1
Level 2 Search	1
Level 3 Search	1

Thirty-six of the 53 police services use the term "strip search" or "strip/complete search." Seventeen police services use terms that do not include "strip" in the term at all. Kingston Police Service uses "Level 2 Search" to describe a strip search. Toronto Police Service uses the term "Level 3 search" to describe a strip search. It is one of four levels that Toronto Police Service uses to describe the search of persons:

- A Level 1 search means a frisk or pat-down search of clothing including pockets that does not include the removal of any clothing except outerwear such as jackets, hats, gloves or mittens. It is also referred to as a "field search."
- A Level 2 search is a more thorough search that may include the removal of clothing that does not expose a person's undergarments or areas of the body normally covered by undergarments. A Level 2 search is commonly referred to as a "general search," and is usually conducted in a location that provides a degree of privacy.
- A Level 3 search is equivalent to the term "strip search." It means a search that includes the removal of some or all of a person's clothing and a visual inspection of the body. More specifically, a Level 3 search involves the removal of clothing that fully exposes the undergarments or an area of the body normally covered by undergarments (genitalia, buttocks, women's breasts).

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 A Level 4 search means a body cavity search – a search of the rectum or vagina.

The fact that different services use different terms to describe a strip search is unsatisfactory. It promotes confusion and undoubtedly makes it more difficult to train officers across the province. Terms such as "complete," "thorough" or "detailed" searches tend to obscure what a strip search truly entails. The variability of terms makes it more difficult for officers to understand the jurisprudence as it continues to develop. It is also incompatible with Ontario police services' use of shared databases and the need for standardized language. The use of "Level 3" by one police service and "Level 2" by another police service to describe the same type of search highlights the problem.

Recently, Waterloo Regional Police Service requested that its officers strike out "thorough" and write "strip" on their forms. Halton Regional Police Service recommended to the OIPRD that standard language be prescribed for strip searches along with defining criteria for each level of search. Cobourg Police Service recommended to the OIPRD that there be consistency in terminology across the variety of police databases for similar information.

As discussed in Chapter 2 of this report, in *R. v. Golden*, the Supreme Court of Canada defines a strip search as "the removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person's private areas, namely genitals, buttocks, breasts (in the case of a female), or undergarments"<sup>41</sup>

The Supreme Court was of the view that this definition accurately captures the meaning of the term "strip search." It distinguishes strip searches from less intrusive "frisk" or "pat-down" searches, which do not involve the removal of clothing, and from more intrusive body cavity searches, which involve a physical inspection of the detainee's genital or anal regions.<sup>42</sup>

<sup>&</sup>lt;sup>41</sup> Golden, para 47.

<sup>42</sup> Ibid.

In my view, there is no valid reason why procedures provincewide should not use the complete definition set out in binding jurisprudence.

Table 13: Police Service Definitions of Strip Search Relative
to Golden Definition

Definition	Number of Services
Includes the full definition from R. v. Golden	10
Includes the removal of clothing to permit visual inspection, but does not include rearrangement of clothing or reference to genitals, buttocks or breasts	27
Includes removal of clothing, but does not include rearrangement of clothing, visual inspection or reference to genitals, buttocks or breasts	4
Includes only visual inspection of naked body or undergarments, without reference to removal of clothing, rearrangement of clothing or reference to genitals, buttocks or breasts	2
Includes removal of clothing to permit visual inspection and reference to genitals, buttocks or breasts, but does not include rearrangement of clothing	1
Includes the removal and rearrangement of clothing to permit visual inspection, but does not include reference to genitals, buttocks or breasts	1
Includes removal or rearrangement of clothing, but does not include visual inspection; does include that strip search conforms to the definition in <i>R. v. Golden</i>	1
No definition	7

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Our review found that seven police services do not include an actual definition of a strip search (whatever term is used) in their procedures. Another 36 services included definitions that did not conform to the complete *Golden* definition of a strip search.

The following 10 police services use the *Golden* definition, in full, in the definitions section of their procedures:

- · Barrie Police Service
- Belleville Police Service
- Greater Sudbury Police Service
- Halton Regional Police Service
- Niagara Regional Police Service
- Orangeville Police Service
- Sarnia Police Service
- Shelburne Police Service
- Wingham Police Service
- York Regional Police

The key points of the Golden definition are:

- · The removal or rearrangement of clothing
- To permit a visual inspection
- · Of genitals, buttocks, breasts or undergarments

It is problematic that only 10 of 53 police services provide the full definition of a strip search set out in *R. v. Golden* in their procedures. It is even more problematic that the majority of police services provide definitions that do not include the rearrangement of clothing (rather than merely the removal of clothing) to permit a visual inspection of private parts or undergarments. Moving clothing aside or opening one layer of clothing so as to permit such visual inspection remains an important component of a strip search.

Our review also revealed that some police services include searches of detainees' mouths, hair, beards, or the spaces between fingers or toes in strip search definitions. Certainly, a police service is entitled to develop procedures that exceed those mandated by the *Golden* decision; however including these in a

strip search definition is more likely to cause confusion. It also skews statistical and comparative analysis to describe these as strip searches.

Finally, I observe that a number of police services effectively bury the definition of a strip search in sections containing a number of topics. Effective procedures are those that are easily understood and user-friendly. The definition of a strip search, when and how it may be conducted are all important topics to be separately addressed – indeed, some will warrant multiple subparagraphs.

#### **RECOMMENDATIONS:**

- 11. All policies and procedures across the province should use the same terminology to describe a strip search, such as the definition of a strip search in our procedures template.
- 12. All policies and procedures across the province should incorporate the term "strip search" into their policies and procedures. Terms such as "complete," "thorough" or "detailed" are confusing and should be avoided.
- 13. If police services wish to situate strip searches within a spectrum of searches of different levels (such as the numbering system used by Toronto Police Service), their policies and procedures should explicitly relate the applicable level of search to the term "strip search" to enhance understanding and connect those policies and procedures to existing jurisprudence.
- 14. Through the Search of Persons Guideline or other regulation, the Ministry of Community Safety and Correctional Services should ensure that levels of searches are described and defined consistently throughout the province.
- 15. All policies and procedures pertaining to strip searches should explicitly contain a definition of a strip search. That definition should conform to the full definition provided by the Supreme Court of Canada in the *Golden* decision, such as the definition of a strip search in our procedures template.

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16. Where a policy or procedure extends to police searches that are not covered by the *Golden* definition, the other types of searches should be clearly differentiated from strip searches. This promotes accurate statistical and comparative analyses, accountability, oversight and training for officers.

# WHAT CONSTITUTES A STRIP SEARCH

Our review found that confusion continues to exist, at times, over whether police are conducting a strip search or another form of search. Often, the characterization of the search is dependent on whether the searching officer does or directs something to be done *so as to permit visual inspection of the detainee's private parts or undergarments*. Several examples make the point.

First, the lawful seizure of an item of clothing for the purpose of conducting forensic examination on the clothing or to otherwise preserve the visible evidence of a crime may not amount to a strip search, depending on the circumstances.<sup>43</sup> It may not be done so as to permit visual inspection of the detainee's private parts or undergarments.

Similarly, an officer who feels an item during a frisk search and then reaches into the clothing of an arrested person for the purpose of retrieving and seizing that item, is not conducting a strip search, provided that the rearrangement of clothing does not expose the person's private parts or undergarments or allow the officer to conduct a visual inspection of either.

On the other hand, the removal of clothing out of concern that an arrested person is suicidal may still constitute a strip search. In *R. v. PFG*, the police removed the female arrestee's sports bra, contending that this did not amount to a strip search since "the purpose of this action was not to search for anything such as a weapon or evidence. Its purpose was related to the safety of a prisoner, to prevent the prisoner from harming herself with the undergarment."<sup>44</sup> The court appropriately found that this still constituted a strip search:

<sup>&</sup>lt;sup>43</sup> R. v. Kitaitchik, 2002 CanLII 45000 (ON CA), http://canlii.ca/t/1cx77; R. v. Backhouse, 2005 CanLII 4937 (ON CA), para 85-90. (CanLII), http://canlii.ca/t/1jvwn; R. v. Ricciardi, 2017 ONSC 2105 (CanLII), http://canlii.ca/t/h32j7

<sup>&</sup>lt;sup>44</sup> R. v. PFG, 2005 BCPC 187, para 30. (CanLII), http://canlii.ca/t/1kvk5

"[A] strip search is not restricted to a situation where the police are searching an accused person for weapons or evidence of the commission of a crime. The term refers to any situation in which the clothing of the person being searched is removed or rearranged so as to allow for a visual inspection of an area of the body to which the person might reasonably expect some privacy, including the undergarments."<sup>45</sup>

A privacy gown is used by some services as replacement clothing when they have removed an arrestee's clothing for safety reasons. These privacy gowns may be used throughout the strip search process, especially if officers have removed a female's bra for safety reasons. For example, the Cobourg Police Service reported that it provides security gowns and blankets if its officers remove clothing for any reason. Thunder Bay Police Service indicated that when prisoners have their clothing removed for safety reasons, they will be given "suicide gowns."

Services are inconsistent, in practice, in how they characterize scenarios in which their officers remove or cause clothing to be removed to be replaced by gowns for the arrestee's personal safety. Some police services do not characterize these scenarios as involving strip searches on the rationale that, although garments have been removed, this was not done to enable a search to take place. The *Golden* test informs whether they are properly characterized as strip searches in particular cases. However, the removal of clothing will also raise privacy issues, whether or not characterized as strip searches. It is important that procedures address these scenarios.

As indicated in Chapter 3 of this report, it is important that police services draw upon the lessons learned from existing jurisprudence to regularly update officer training, as well as existing procedures. It should not be assumed that the correct articulation of the strip search definition in procedures is enough to ensure understanding of what a strip search is, and what its parameters are.

<sup>45</sup> *PFG*, para 32.

# WHEN CAN A STRIP SEARCH BE CONDUCTED

The *Golden* decision reflects that a strip search may only be conducted pursuant to a lawful arrest and where the police believe, on reasonable and probable grounds, that the strip search is necessary for safety reasons or to secure evidence related to the arrest. Police officers must be able to articulate the basis for that belief. That basis cannot solely be pre-existing practice or routine.<sup>46</sup>

I place relatively little emphasis on the requirement for a lawful arrest in this report. Although some strip searches have been invalidated, in whole or in part, by a judicial finding that they were not done pursuant to a lawful arrest,<sup>47</sup> the preconditions to a lawful arrest are set out in the Criminal Code and other applicable legislation, and need not be elaborated upon here.

# REASONABLE AND PROBABLE GROUNDS TO BELIEVE A STRIP SEARCH NECESSARY

Police have certain search powers incidental to any lawful arrest. Police do not need to have reasonable and probable grounds to believe that a search is necessary to lawfully conduct a less intrusive search incident to arrest. However, the intrusiveness associated with a strip search requires more. Police must have reasonable and probable grounds to believe that a strip search is necessary in the particular circumstances of a case, either for safety (that is, for the purpose of discovering weapons in the detainee's possession) or to discover evidence related to the reason for the arrest. The mere possibility that a strip search may yield weapons or evidence related to the arrest is insufficient to justify such a search.<sup>48</sup>

Most importantly, this precondition to a lawful strip search means that strip searches cannot be done as a matter of routine whether that routine is tied to the fact that someone is being arrested or is being arrested for a particular type of offence. As the Ministry of the Attorney General has correctly recognized:

<sup>&</sup>lt;sup>46</sup> *Golden*, para 90, 95-97.

<sup>&</sup>lt;sup>47</sup> See, for example, *R. v. McEwan*, 2017 ONSC 6055 (CanLII), http://canlii.ca/t/hmr9c. Officers relied on vague information from a confidential informant who did not provide any description of the accused's physical characteristics or details about the transaction. The arrest was invalid. As a result, the subsequent detention and strip search were unlawful, resulting in the exclusion of the evidence obtained.

<sup>&</sup>lt;sup>48</sup> *Golden*, para 92, 98-99.

"[A] routine strip search, without regard to the particular circumstances of the specific case, will always violate section 8 of the charter even if it is carried out in good faith without violence."<sup>49</sup>

Put succinctly, a strip search is unlawful if the officer or police service automatically conducts such a search of everyone on a predetermined basis, rather than evaluating its need based on the particular circumstances of the case.

In *Golden*, the Supreme Court observed that strip searches cannot be carried out as a matter of routine applicable to all arrestees, regardless of "whether they are arrested for impaired driving, public drunkenness, shoplifting or trafficking in narcotics."<sup>50</sup>

This observation is significant since our review identified cases, involving multiple police services, in which the searching officers documented, as the sole ground for the strip searches they conducted, the fact that they had arrested someone for a drug charge (sometimes simply referring to the CDSA (the Controlled Drugs and Substances Act).

The strip search conducted routinely or in the absence of reasonable and probable grounds for the strip search figured prominently in a number of judicial decisions. The following are illustrative.

In *R. v. Muller*, the court stated that "it would appear likely that a disproportionate number of strip searches are being carried out by the Windsor Police Service in narcotics investigations, many of which are without proper grounds and many of which yield no evidence of value."<sup>51</sup> Similarly, in *R. v. Bruce* the court concluded that the officer's decision to strip search and "[his] wish to ensure there were no more drugs was of a general nature and likely routine. His concern that the defendant might hand off contraband to others was pure speculation, belied by the fact she would be handcuffed to the bench in the report room in the presence of the arresting officer. His assertion that prisoners hide things was not specific to this accused. It was meaningless in these circumstances."<sup>52</sup>

<sup>&</sup>lt;sup>49</sup> Criminal Law Division, Ministry of the Attorney General. *Legal Overview of Strip Searches Incident to Arrest*. Ontario Ministry of the Attorney General, August 29, 2017.

<sup>&</sup>lt;sup>50</sup> Golden, para 95.

<sup>&</sup>lt;sup>51</sup> R. v. Muller, 2011 ONSC 4892, para 84. (CanLII), http://canlii.ca/t/fn17r

<sup>&</sup>lt;sup>52</sup> R. v. Bruce, 2018 ONCJ 135, para 41. (CanLII), http://canlii.ca/t/hqsfp

In *R. v. Gonzales*, the accused was pulled over and arrested after he was found in possession of large bags of marijuana. He was taken to the police station and strip searched. Although he was charged with possession for the purpose of trafficking, the Court of Appeal found the strip search to be unlawful as there was no reason to believe that the accused needed to be strip searched to locate evidence. The accused did not know that he was going to be pulled over and only had marijuana in bulk.<sup>53</sup>

In several strip searches conducted by Durham Regional Police, officers concluded that, based on their experience dealing with people charged with trafficking or possession, the arrestees were likely to be hiding drugs on their body. This reasoning could result in routine strip searches of anyone arrested for possession of illicit drugs or trafficking in drugs, regardless of the particular circumstances in each case.

Although our review does not purport to analyze, for statistical purposes, the circumstances under which routine strip searches are conducted, we found that persons arrested on drug or assault charges were frequently the subject of routine strip searches. On a number of occasions, women wearing an underwire bra were routinely strip searched. (This issue is addressed separately later in this report.) On multiple occasions, we also observed the unlawful use of strip searches to look for drugs solely because arrested individuals had a history of drug use or prior drug charges. This sometimes occurred even though the individuals were not arrested for drug offences, but for breaches of court orders unrelated to drug use or failures to attend court.

Our review of both judicial decisions and the underlying documentation in specific cases shows that the use of strip searches as a matter of routine and in the absence of the requisite reasonable and probable grounds to believe that such searches are necessary for safety or the discovery of evidence related to the arrest continues to represent a systemic issue. This issue spanned multiple police services. Current policies, procedures and training have not adequately

addressed this issue. As well, there is great variation in practice, between police officers and between police services as to whether and how the rationale for strip searches are documented.

The majority of police services identify the "reasonable and probable grounds" threshold for a valid strip search in their procedures. Several police service procedures make no reference to the threshold test whatsoever. It is essential that they do so.

Several police service procedures explicitly caution that "strip searches, conducted as a matter of routine, are not justified in law." The balance of existing procedures make no reference to the prohibition against routine strip searches. None of the police services explain what constitutes a routine search.

# **RECOMMENDATIONS:**

- 17. Every police service in Ontario should ensure that their procedures pertaining to strip searches explicitly set out the threshold preconditions to a valid strip search, with particular emphasis on the requirement that the police must believe, on reasonable and probable grounds, that a strip search is necessary in the particular circumstances of the case either for safety (that is, for the purpose of discovering weapons in the detainee's possession) or to discover evidence related to the reason for the arrest.
- 18. These procedures should also explicitly state that a strip search, done as a matter of routine without regard to the specific circumstances of the specific case, will violate section 8 of the charter even if it is carried out in good faith without violence.

# SPECIAL ISSUE: GENERAL POPULATION OR SEPARATE HOLDING CELL

When individuals are arrested and detained for a show cause hearing, they may or may not be entering the general prison population. *R. v. Golden* states, "[w]here individuals are going to be entering the prison population, there is a greater need to ensure that they are not concealing weapons or illegal drugs on their persons

prior to their entry into the prison environment." On the other hand, if a person is to be detained, in isolation, for a short period of time (such as an intoxicated individual held overnight in a cell at a police station), there may be less of a security concern.<sup>54</sup> These differences invite consideration as to whether there are reasonable grounds to expect that the particular accused will be in contact with others being detained by the state.<sup>55</sup>

An intermediate situation might also exist in which a person will be detained in the cell adjacent to one individual. This circumstance may not suffice to justify treatment of the matter as if that individual was entering the general prison population. For example, the presence of another detainee, without anything more, may be insufficient to justify a strip search if reasonable grounds do not exist to believe that the person potentially to be searched is carrying weapons or other items that could be passed on to someone else. Strip searches have been upheld in circumstances where the detainee was to be held in cells or bullpens containing more than one accused, held in courtroom detention facilities or transported in a prisoner van containing more than the person to be searched.<sup>56</sup> The point here is that there is no substitute for a case-by-case assessment of the need to conduct a strip search.

There will also be limits on the authority of officers to strip search an individual on multiple occasions. For example, a prisoner may be strip searched at the station, in anticipation of being lodged in a detention centre. Strip searching that same prisoner again at the courthouse or at the jail may be unlawful.<sup>57</sup> Similarly, the practice of repeatedly strip searching a prisoner who moves from the courthouse cells to the courtroom to sit at the counsel table and back again, has been criticized by the courts.<sup>58</sup>

<sup>&</sup>lt;sup>54</sup> *Golden*, para 96.

<sup>55</sup> R. v. Clarke, 2003 CanLII 64244 (ON SC), para 95-97. (CanLII), http://canlii.ca/t/232ff

<sup>&</sup>lt;sup>56</sup> Clarke, para 97; R. v. S.F., [2003] OJ No 92 (CJ), para 25 (QL); R. v. Fuglerud, 2012 ONSC 6535, para 23. (CanLII), http://canlii.ca/t/ftv2x; R. v. Skinner-Withers, 2006 ONCJ 47 (CanLII), http://canlii.ca/t/1mlrk

<sup>&</sup>lt;sup>57</sup> Clarke, para 107-111. The accused was subjected to three strip searches – two at the police station, and one at the Toronto Jail when his surety was unable to attend the courthouse on the day of the bail hearing. The first was held to be lawful; the second and third were violations of the charter, further to Golden. Similarly, in R. v. A.B., 2003 CanLII 35574 (ON SC), para 30-31. (CanLII), http://canlii.ca/t/6xk1, the summary conviction appeal court held that the first strip search at the police station – in anticipation of a bail hearing – was justified. But the second strip search at the courthouse was unnecessary and unlawful.

<sup>&</sup>lt;sup>58</sup> Madray, at para 73-80. It is incumbent on the court security to demonstrate reasonable grounds, objectively viewed, to believe the additional strip searches are necessary. The simple fact of a criminal record, allegations of violence in a year-old indictment, or the remote possibility of securing contraband while in the courtroom are not sufficient, where adequate security can be otherwise be implemented.

In *R. v. McKay*, the court found that one division of the Toronto Police Service routinely strip searched everyone detained for a show cause hearing.<sup>59</sup>

In *R. v. Melo*, the court found that a similar routine was occurring at another division.<sup>60</sup>

I do appreciate that in the vast majority of cases the police will be justified in conducting strip searches when detaining a person pending a show cause hearing. However, the police must still turn their mind to whether or not there is a risk that the person being detained does in fact have contraband or weapons on them.<sup>61</sup>

Our review found that Toronto Police Service officers frequently relied solely on the fact that the arrestee was being held for a show cause hearing as grounds for the strip search. This occurred despite a September 2015 Routine Order from the Office of the Chief of Police. It directed Toronto officers that, "Level 3 searches shall not be conducted on persons brought into custody by Toronto police officers based solely on the grounds that the person may come into contact with other persons in custody." We also found that the existing documentation did not necessarily even convey whether the arrestee was to be placed into the general prison population.

None of this was unique to Toronto Police Service. In fairness, some police services, including Toronto Police Service, are less able to ensure, based on volume of arrests alone, that those arrested will be isolated from others detained either when detained in a police cell or when transported to court.

In contrast, Waterloo Regional Police Service (WRPS) confirmed that arrestees held for a show cause hearing are generally held by themselves. It appeared rare for WRPS officers to rely upon a pending show cause hearing as the grounds justifying a strip search.

<sup>59</sup> R. v. McKay, 2013 ONCJ 298, para 74. (CanLII), http://canlii.ca/t/fxr8x

<sup>60</sup> R. v. Melo, 2013 ONSC 4338 (CanLII), http://canlii.ca/t/fzd2t

<sup>&</sup>lt;sup>61</sup> *McKay*, para 75.

Our review also discovered cases in which police officers merely stated "safety of officer and arrestee" as the reasonable grounds for conducting a strip search, without any indication of why there was a safety concern. This is unacceptable.

# **RECOMMENDATIONS:**

- 19. The fact that an individual is being held for a show cause hearing does not conclusively determine whether a strip search is permissible, though it is a relevant factor for consideration, together with the anticipated circumstances surrounding the arrestee's detention, pending the show cause hearing or release from custody.
- 20. Every police service in Ontario should ensure that their procedures and training reflect that the fact that a show cause hearing will be held does not mandate a strip search in every case.

#### ALTERNATIVES TO STRIP SEARCHES FOR SAFETY REASONS

Access by an arrested person to a potential weapon figures prominently in whether a strip search needs to be conducted for safety purposes. A potential weapon extends beyond conventional weapons such as guns and knives to items that can be used to cause harm, including razor blades, needles or broken pieces of glass. Depending on the circumstances, such items may constitute safety hazards.

Most services do not specify in their procedures what constitutes a safety hazard or an item that could cause harm. I take no issue with this approach given the wide range of items that might constitute a safety hazard, depending on the particular circumstances. As already stated, officers must look at those particular circumstances to determine whether there is a true need for a strip search for safety reasons.<sup>62</sup>

One important way to address safety concerns without resorting to a strip search is to complete a frisk search or pat down search first. As stated in *Golden*:

<sup>62</sup> R. v. Coulter, 2000 OJ No 3452 (CJ), para 26-27 (QL).



"[A] "frisk" or "pat down" search at the point of arrest will generally suffice for the purposes of determining if the accused has secreted weapons on his person. Only if the frisk search reveals a possible weapon secreted on the detainee's person or if the particular circumstances of the case raise the risk that a weapon is concealed on the detainee's person will a strip search be justified."<sup>63</sup>

Some police services also employ a search with a metal wand as part of the frisk process. This step may either satisfy the officer that the arrested person is not hiding anything metallic, or may provide some support for a strip search if the wand is triggered. Officers should document the results of the frisk and wand search. If that preliminary search yields no sign of a weapon, a strip search for weapons should not take place, unless articulated grounds exist that the person may be carrying a weapon that would not be detected through the frisk and wand search.

Toronto Police Service introduced a body scan technology pilot project at 14 Division in September 2018. Of course, body scans, if technologically sound, may serve as another preliminary way to reduce the need for a strip search. I do not address the use of body scans in detail in this report, but recognize that they must also be examined from the perspective of larger privacy concerns. It is commendable that the Toronto Police Service is exploring body scanners as an alternative that may ultimately lead to a reduced number of strip searches.

# SPECIAL ISSUE: UNDERWIRE AND STRING BRAS

There are items of clothing that are generally removed from detainees for safety reasons during less intrusive searches. These items may include laces, belts and hoodie strings; however, some services routinely remove women's underwire bras, purportedly for safety reasons.

The removal of an underwire bra, for safety or to discover evidence, will almost invariably constitute a strip search since the removal permits either the visual inspection of a woman's breasts or that woman's undergarments.<sup>64</sup> Several cases are illustrative.

In *R. v. Lee*, the accused was arrested and charged with impaired operation of a motor vehicle. She was crying and unstable on her feet. She was booked at the station and a female officer conducted a frisk search to confirm that she did not possess anything she could bring into the cells. During the frisk, the officer noted that Ms. Lee was wearing an underwire bra and asked her to remove it to be searched. She removed her sweater, shirt and bra all at the same time, although the officer had expected her to just remove her bra under her shirt.<sup>65</sup>

The stated grounds for the search were that "[d]ue to the structure of an underwire bra, things can easily be hidden in it. Additionally, the underwiring can be removed from the bra by the wearer and used as a weapon to harm police officers, to inflict self-harm, or to damage the police cells."<sup>66</sup> The bra was searched to ensure no items were hidden inside and for safety reasons.

The booking sergeant testified that he had been a police officer for 28 years. As far back as he could remember, the removal and seizure of underwire bras represented the "policy" of every supervisor in his district, and as far as he knew, all police stations within the York Regional Police.<sup>67</sup> In the judgement on appeal, the court found, "A "policy" applied "without exception" to any female detainee wearing an underwire bra is not a case-specific circumstance. Rather it is a basis for routine strip searches of female detainees, in contravention of section 8 of the

<sup>&</sup>lt;sup>64</sup> Golden, para 47.

<sup>65</sup> R. v. Lee, 2013 ONSC 1000, para 5-10. (CanLII), http://canlii.ca/t/fw3n4

<sup>66</sup> Ibid, para 9.

<sup>67</sup> Ibid, para 15.

charter.<sup>768</sup> The court listed the specific circumstances in that case that should have been considered, including the fact that "[t]he pat-down search at the station did not reveal that her bra was coming apart or damaged such that the underwiring was exposed or easily removable from its casing.<sup>769</sup>

Our review found that officers continue to use the reasoning adopted by the searching officer in *R. v. Lee* although not every underwire bra can easily be used as a potential weapon.<sup>70</sup> This is particularly true where the underwiring is sewn into the fabric and difficult to remove. In our review of multiple cases involving the removal of underwire bras, we found **no** documentation as to why the officers believed that the specific bras removed constituted a safety hazard.

In *R. v. Judson*, the court granted a stay, stating that "[t]he removal of underwire bras, and possibly...the removal of any type of bra, of all female detainees, is a routine procedure at the Quinte West OPP detachment."<sup>71</sup>

Very few services address the issue of underwire bras in their procedures, although some Ontario police chiefs have sent out updated memos to their services outlining the law respecting underwire bras. Indeed, the Greater Sudbury Police Service sent out a service-wide memo following the decision in *R. v. Lee*, highlighting the fact that the removal of an underwire bra still falls within the definition of a strip search.

The only service that consistently documented whether bras were seized during strip searches prior to the arrestee being lodged in a cell for the period 2014 to 2016 was Toronto Police Service. The data shows that bras were seized in 35.22 per cent of all female strip searches.

Based on our review of both judicial decisions and underlying documentation from police services across the province, it is obvious to me that officers continue to routinely remove and seize underwire bras from women being lodged in detention cells. This occurs despite the absence of reasonable grounds to believe that it is necessary to do so.

<sup>68</sup> Ibid, para 42.

<sup>69</sup> Ibid, para 43.

<sup>&</sup>lt;sup>70</sup> Ibid, para 44.

<sup>&</sup>lt;sup>71</sup> R. v. Judson, 2017 ONCJ 439, para 38. (CanLII), http://canlii.ca/t/h4kwd

A similar issue also arises in connection with string bikini tops sometimes used as bras. A string bikini top could conceivably be used as a ligature for self-harm or to harm others. However, it would be unlawful for such an item to be routinely removed based on this possibility alone.

# **RECOMMENDATIONS:**

- 21. Every police service in Ontario must communicate effectively to their officers, through illustrations informed by existing jurisprudence, what would amount to unlawful routine strip searches. Such communication should form an essential part of officer training. However, such police services would also be well advised to briefly include in their procedures several prominent examples of unlawful strip searches done routinely. These examples might include:
  - (a) Strip searches inevitably done, regardless of the individual circumstances, based on the nature of the charge(s) (e.g. drug offences) faced by the arrested individual.
  - (b) Strip searches inevitably done because the arrested individual will be held for a show cause hearing, regardless of whether that individual will be detained or transported with others, and regardless of whether reasonable grounds exist that a strip search is necessary for the safety of that individual or others.
  - (c) The automatic removal of bras or underwire bras, and string bikini tops, regardless of the individual circumstances.

As reflected later in this report, procedures must also require that officers document the grounds for conducting a strip search. If safety considerations require a strip search, it is insufficient for officers to merely identify that the strip search was done for the safety of the officer, the arrested person or others. It is also insufficient for officers to merely document, as the grounds for the search "show cause hearing," the charge facing the accused or the item removed (such as an underwire bra).

# HOW A STRIP SEARCH SHOULD BE CONDUCTED

In order to survive constitutional scrutiny, a strip search must be conducted in a reasonable manner. In *R. v. Golden*, the Supreme Court of Canada adopted the guidelines derived from the United Kingdom's Police and Criminal Evidence Act (PACE), which provided a framework for how a strip search should be conducted. The Supreme Court also provided additional direction on this issue. What follows is an analysis of existing procedures as they relate to how a strip search is to be conducted, with reference both to the direction provided by the Supreme Court as well as deficient practices in Ontario identified during my systemic review.

# LOCATION OF SEARCH

"Can the strip search be conducted at the police station and, if not, why not?"

The Court in *Golden* stated that "[s]trip searches should generally only be conducted at the police station except where there are exigent circumstances requiring that the detainee be searched prior to being transported to the police station."<sup>72</sup> Strip searches conducted in the field almost always represent a much greater invasion of privacy than the comparable searches in a designated area at a police station.

As a result, officers who rely upon safety concerns as the justification for a strip search in the field, must explain why there was a "necessity and urgency to search for weapons or objects that could be used to threaten the safety of the accused, the arresting officers or other individuals [and] why it would have been

<sup>72</sup> Golden, para 102.

unsafe to wait and conduct the strip search at the police station rather than in the field."73

Similarly, officers who rely upon the need to discover evidence related to the arrest as the justification for a strip search in the field, must explain why such a search was needed to preserve evidence and prevent its disposal by the arrested person before arrival at the police station.<sup>74</sup>

Where officers have reasonable grounds to believe that the arrested person has hidden drug evidence on his or her body, one alternative to removing the evidence in the field might be to handcuff the arrested person and have an officer sit in the back of the police cruiser with the arrestee during transportation to the police station. We saw examples of this approach taken by several police services.

Although our review does not purport to be an exhaustive analysis of all strip searches conducted in Ontario, we did not find evidence that officers regularly conducted such strip searches in the field. Indeed, in the specific cases of strip searches in the field that we examined, officers provided detailed notes explaining the exigent circumstances said to justify the searches.

Having said that, the procedures on this topic could be improved. Some police services allow strip searches in the field when weapons are involved, without qualification. Almost all procedures state that the search must be conducted in a private area; however they do not articulate when such a search can be conducted in the field, or even that they should only be conducted in the field when exigent circumstances exist.

# RECOMMENDATION

22. The procedures for every police service in Ontario should state that strip searches should always be conducted in a private area within the police station or detachment unless exigent circumstances exist, which are fully documented by the officers involved, to conduct a strip search in the field.

<sup>&</sup>lt;sup>73</sup> Ibid, para 102.

<sup>&</sup>lt;sup>74</sup> Ibid, para 93; *R. v. Muller*, 2014 ONCA 780, para 57. (CanLII), http://canlii.ca/t/gf6xd

In 2010, a Toronto Police Service detective sergeant attended a scene where a man was under investigative detention by the side of the road for possible firearm and drug related charges. Although the man had already been frisk searched, the sergeant conducted another search. The man's pants were lower than the waistband of his underwear. Seeing a portion of cellophane sticking out from the back of the man's underwear, the sergeant pulled the man's underwear away from his body and exposed his buttocks. This resulted in the seizure of one package of cocaine. The sergeant then took the man to the ground and pulled his pants most of the way down his buttocks. The court found that the sergeant conducted two unauthorized strip searches on the detainee and that there were no exigent or exceptional circumstances requiring the searches to be done in the field. The court excluded the drug evidence located in the search.<sup>75</sup>

# PROMOTING THE HEALTH AND SAFETY OF ALL INVOLVED

*"Will the strip search be conducted in a manner that ensures the health and safety of all involved?"* 

The Court in *Golden* explained how even a strip search carried out in a reasonable manner can be humiliating, degrading, demeaning, upsetting and devastating.<sup>76</sup> However, it also observed that a strip search will always be unreasonable if it is carried out abusively or for the purpose of humiliating or punishing the arrestee.<sup>77</sup>

Few services address this topic in their policies or procedures. The Ottawa Police Service sets out the above quote from *R. v. Golden* as one of its "Strip Search Principles."

# **RECOMMENDATION:**

23. The procedures for every police service in Ontario should state that a strip search will always be unreasonable if it is carried out abusively or for the purpose of humiliating or punishing the arrested person.

<sup>&</sup>lt;sup>75</sup> R. v. Ali, 2011 ONSC 424, para 58, 65, 66, 77, 85. (CanLII), http://canlii.ca/t/2fcxk

<sup>&</sup>lt;sup>76</sup> Golde*n*, para 90.

<sup>77</sup> Ibid, para 95.

# THE USE OF PRIVACY GOWNS

This report previously addressed when a strip search is justified, including the removal of a female's bra, to ensure the safety of the arrested person, the police or others. I also addressed the desirability of using frisks or pat-downs, with wands if practicable, to reduce the need for strip searches. Even where reasonable grounds continue to exist to justify a strip search, these less intrusive searches may also have an impact on how that strip search is conducted: in particular, in modifying what areas of the body or undergarments have to be visually inspected.

In addressing how strip searches are to be conducted to ensure the health and safety of all concerned, I also wish to briefly return to the use of privacy gowns.

As indicated earlier, a privacy gown is used by some services as replacement clothing when they have removed an arrestee's clothing for safety reasons. These privacy gowns can be used throughout the strip search process, especially if officers have removed a bra for safety reasons. The Cobourg Police Service provides security gowns and blankets if removing clothing for any reason. Thunder Bay Police Service indicated that when prisoners have their clothing removed for safety reasons, they will be given "suicide gowns."

I earlier discussed the fact that the replacement of an arrested person's own clothing with a privacy gown may constitute a strip search depending on the particular circumstances, and that police services are not consistent in how they address this issue. None of this commentary is intended to discourage the use of substituted clothing, in appropriate circumstances, where such clothing may enhance the privacy of the affected individual.

# **RECOMMENDATION:**

24. Every police service in Ontario should promote, in their procedures, the use of a frisk and/or wand or analogous less intrusive search methods before officers decide whether to conduct a strip search. If the results of a frisk/wand or analogous search methods are negative, officers should not conduct a strip search on safety grounds unless they are able to articulate why they have reasonable and probable grounds to believe that the arrested person is concealing a weapon.

# **AUTHORIZATION BY A SUPERVISOR**

*"Will the strip search be authorized by a police officer acting in a supervisory capacity?"* 

The Supreme Court, in *R. v. Golden*, adopted the English PACE legislative guidelines that support the pre-authorization by a supervisor of a contemplated strip search.<sup>78</sup> MCSCS's Policing Standards Manual provides that every police service's procedures on Search of Persons should set out the procedures for undertaking strip/complete searches, including the circumstances, if any, where permission of a supervisor must be obtained before a strip/complete search is conducted.<sup>79</sup>

All existing Ontario police service procedures require authorization of a strip search; however, they vary on the extent to which this requirement is elaborated upon. For example, Barrie Police Service states that it is the duty of the Officerin-Charge to articulate the grounds, be present during the search and ensure the grounds are documented in the notebook and prisoner log. Other services simply state that the searching officer is to get authorization from a supervisor.

In my view, absent exigent circumstances, the authorization of a supervisor (who may be the Officer-in-Charge at the station or detachment) should be mandated before a strip search is conducted. As well, best practices suggest that the supervisor should hold a higher rank than the most senior officer participating in the strip search and not be actively involved in the investigation that led to the arrest. Where such a supervisor is not available at the station, the searching officer should obtain authorization over the telephone. The particulars relating to the authorization should be documented. Those particulars include the name and rank of the authorizing supervisor, the time authorization was given, and the grounds for the authorization.

Although procedures provide for the authorization of strip searches by supervisors, our review found that the practices across the province are uneven. The request and authorization for conducting a strip search are often not reflected in the searching officers' notes. Toronto Police Service officers generally noted

<sup>&</sup>lt;sup>78</sup> Ibid, para 100-101.

<sup>&</sup>lt;sup>79</sup> Ministry of the Solicitor General. *Policing Standards Manual (2000)*, Search of Persons (LE-012). Ontario Ministry of the Solicitor General, February 2000.

their request for authorization, but frequently did not confirm that authorization was granted and by whom. The Ontario Provincial Police, on the other hand, requires the authorizing officer to be named and to sign-off on the strip search form. However, in a few OPP cases we reviewed, we found that the authorizing officer had not signed the form. In one case, the form had been completed only after we requested the documentation.

The need for supervision and accountability means not only that pre-authorization should be obtained for each strip search, absent exigent circumstances, but that police services should regularly review their strip search documentation and practices to ensure compliance with existing procedures, including the pre-authorization of strip searches.

As a result of the OIPRD request for strip search documentation, Windsor Police Service conducted a review of its practices for conducting strip searches. The service identified the absence of a system for notifying command officers when a strip search occurred. The service then set up a procedure that included officers emailing the staff sergeant of patrol and the inspector in charge of the detention unit to notify them that a strip search had occurred with an assigned report number. This practice was to be integrated into the Versadex system and reviewed annually.

# **RECOMMENDATIONS:**

- 25. Every Ontario police service's procedures should provide that:
  - (a) Absent exigent circumstances, strip searches should always be authorized, in advance, by a supervisor (who may include the Officer-in-Charge).
  - (b) Such authorization should be given in writing or alternatively, by telephone.
  - (c) Absent exigent circumstances, that authorization should be obtained from a supervisor who is senior in rank to the most senior searching officer and who was not actively involved in the investigation that led to the arrest.

- (d) Absent exigent circumstances, that authorization should be obtained in writing; in any event, the authorization should be documented by the searching officer and the supervisor in accordance with the police service's documentation requirements, whether through notes, strip search forms or both.
- (e) Exigent circumstances, involving the failure to obtain authorization or the failure to obtain written authorization in advance should also be documented as provided for in the service's procedures.
- (f) Practices surrounding strip searches are to be reviewed by the service on at least an annual basis.

# THE GENDER OF SEARCHING OFFICERS AND DETAINEES

*"Has it been ensured that the police officer(s) carrying out the strip search are of the same gender as the individual being searched?"* 

In *Golden*, the Supreme Court stated that an individual must be searched by someone of the same gender as, "women... in particular may have a real fear of strip searches and may experience such a search as equivalent to a sexual assault."<sup>80</sup>

In *R. v. D'Andrade*, the woman who was searched testified that she was "embarrassed and mortified" when a police officer unzipped her sweater on the side of a road. She was wearing a see-through bra and her breasts were exposed in view of two male police officers. The court found that her charter rights were violated. Her impaired driving charge was dismissed.<sup>81</sup>

The Policing Standards Manual states that every police service's procedures on the search of person should set out the procedures for undertaking strip/complete searches, including that a search be conducted by a member of the same gender as the person to be searched, unless safety requirements dictate otherwise.<sup>82</sup>

<sup>&</sup>lt;sup>80</sup> Golden, para 90.

<sup>&</sup>lt;sup>81</sup> D'Andrade, para 63, 91-98.

<sup>&</sup>lt;sup>82</sup> Ministry of the Solicitor General. *Policing Standards Manual (2000)*, Search of Persons (LE-012). Ontario Ministry of the Solicitor General, February 2000.

A review of the cases disclosed to the OIPRD showed that women were strip searched much less frequently than men. While the documentation provided by police services could not be relied upon for precise numbers, for the reasons earlier indicated, approximately 20 to 25 per cent of strip searches involved female detainees.

My review showed that, generally, female detainees were strip searched by female officers. We also found that officers who were called in to conduct strip searches often made more detailed notes than the arresting or investigating officers regarding the grounds, authorization and manner in which these searches were conducted.

All police services have a section in their procedures that explain strip searches are to be conducted by an officer of the same gender as the arrested person. A few services also provide officers with specific directions on what to do if there is only one female police member (or none) available. There are currently significantly lower numbers of females in policing, so it is not surprising that smaller services sometimes have a hard time finding two females to search an arrested female. *Golden* advised that a male officer may be permitted to stand outside the room out of view of the search, but close enough to attend if the officer in the room calls for assistance.

In the cases we obtained for review, all but one of the officers ensured that strip searches of arrested females were conducted by at least one female officer. Where there were not enough female officers or special constables available, the male officer would stand out of view outside the room. This was clearly noted in officers' notes. In one case from Peel Regional Police, a female was strip searched by a male officer because there were no females available at the police station at that time. This was unacceptable – doubly so given the size of the service.

Even where the arrested person is resisting, the courts have been very clear that officers need to follow the gender rules for strip searches and have granted stays when these rules were not followed. In *R. v. Bonds*, the court was "appalled by the fact that a strip search was undertaken...in the presence of, and with the assistance of at least three male officers. It is quite evident that none of these

officers have received gender training, and that they do give only lip service to female dignity and privacy."<sup>83</sup>

In summary, although there are instances in which the gender-related requirements for a lawful strip search are not complied with, these requirements appear to be widely understood.

The template for strip search procedures, included in Appendix A of this report, contains reference to a step-by-step procedure that police services should create for the strip search of a female.

# **RECOMMENDATIONS:**

- 26. Every police service in Ontario should ensure that its procedures address:
  - (a) The ordinary requirement that searching officers be of the same gender as the person to be searched.
  - (b) The practice to be adopted when there are insufficient officers of the same gender to participate in the strip search.
  - (c) The circumstances under which the strip search should not be conducted by searching officers of the same gender as the person to be searched: for example, based on the person's selfidentification respecting sexual orientation.

# STRIP SEARCHES OF TRANSGENDER PEOPLE

*R. v. Golden* did not address how to properly and respectfully conduct a search of a transgender arrestee. Ontario's Policing Standards Manual does not address transgender people in its sample policies and guidelines for procedures either.

In 2006, this issue was addressed by the Ontario Human Rights Tribunal in *Forrester v. Peel* (Regional Municipality of Peel – Police Services Board). In the *Forrester* case, a pre-operative male-to-female trans woman was strip searched by male officers despite repeated requests, that were denied, to be searched by females. Forrester was extremely traumatized by the searches, stating: "I don't know how to describe how I felt...I guess the best word I can come up with is 'brutalized'."<sup>84</sup> The police service admitted that it violated Forrester's rights under the Ontario Human Rights Code.<sup>85</sup>

The tribunal ordered that the police service revise its directive concerning the strip searches of transgender detainees as follows:

- A transsexual detainee must be offered one of three options for a strip search, namely:
  - o Male officer(s) only or
  - o Female officer(s) only or
  - o A split search<sup>86</sup>
- A split search involves the systematic strip search of a transsexual person, where a female officer searches areas of the body near the female breasts and/or genitalia, and a male officer searches areas of the body near the male genitalia.<sup>87</sup>
- Prior to the strip search being conducted, an officer must explain the process, take notes prior to conducting the search including the choice made by a transsexual detainee, and notify his or her Officer-in-Charge who will authorize the strip search.<sup>88</sup>
- Where an officer has serious reason to doubt a detainee's self-identification as a transsexual, absent any objective criteria that would cause the officer to believe that this is true, the officer may privately ask the detainee certain questions identified by the tribunal to verify the detainee's status. The officer may have a second officer present for both the questions and for the strip

<sup>&</sup>lt;sup>24</sup> Forrester v. Peel (Regional Municipality) Police Services Board et al, 2006 HRTO 13, para 361. (CanLII), http://canlii.ca/t/1r78d

<sup>&</sup>lt;sup>15</sup> Ibid, para 25.

<sup>&</sup>lt;sup>16</sup> Ibid, para 476.

<sup>&</sup>lt;sup>37</sup> Ibid, para 5.

<sup>&</sup>lt;sup>88</sup> Ibid, para 429.

search if the arrested person so chooses. The officer must have approval from his or her Officer-in-Charge before proceeding to conduct the strip search. Other officers of either the same sex of or the opposite sex from the transsexual detainee may stand by, out of vision, in the event of physical resistance or confrontation, just as they would for any other detainee, and in the same number.<sup>89</sup>

The list of questions developed by the tribunal to verify the detainee's status should be included in police service step-by-step strip search procedures for transgender and intersex individuals.

The questions developed by the tribunal have not been immune to criticism. For example, it has been said that the tribunal "left very little room for those who have more fluid conceptions of gender or who may not be in the privileged position of being able to obtain sexual reassignment surgery".<sup>90</sup>

Police officers should be encouraged to show respect and sensitivity. This may mean that procedures should set out the ordinary approach to be taken when gender identity is an issue, while allowing officers the flexibility to attempt to meet any reasonable accommodation requests. For example, we were advised that the Ontario Provincial Police allow all arrested persons being strip searched to identify their own gender and their gender preference of the searcher.

Based on our review, the majority of services now include provisions for the strip search of a transgender arrestee. Some police services have developed more extensive procedures in this regard. Some indicate that officers cannot opt-out of searching a transgender person. This highlights the seriousness and sensitivity that is expected within the police services. Barrie Police Service and Waterloo Regional Police Service have excellent procedures upon which our own template is patterned.

Many of the police services' procedures include a separate form to be completed for strip searches of transgender people. That represents a best practice. However, we found that the definitions provided in the procedures were

<sup>89</sup> Ibid, para 476.

<sup>&</sup>lt;sup>90</sup> Kirkup, Kyle. "Indocile Bodies: Gender Identity and Strip Searches in Canadian Criminal Law." *Canadian Journal of Law and Society* 24, no. 1 (2009): 121.

sometimes limited, out-dated, or offensive; for example, the term "transvestite" is a derogatory term and should not be included in the definitions.

In all the individual cases we reviewed, which were far from exhaustive, we reviewed two strip searches of transgender persons: one in Toronto and one in Waterloo. Based on the notes provided, the officers on both occasions allowed the individuals the opportunity to select the gender of the searcher, respected their choice and properly documented the search. In both cases, officers appeared to accept the individuals' self-identification and did not proceed to the questions.

# **RECOMMENDATIONS:**

- 27. Every police service in Ontario should ensure that their procedures specifically address the appropriate practices for strip searches involving transgender persons.
  - (a) Procedures should define terms such as: transgender, trans man, trans woman, transsexual, gender identity and intersex.
  - (b) Police services are encouraged to consult with the Ontario Human Rights Commission and community organizations with specialized knowledge, in crafting appropriate practices.
  - (c) Procedures should be centred on reasonable accommodation based on self-identification. For example, where the arrested person identifies as trans man or trans woman, the arrested person should specifically be given the choice of a male, female or split search.

# THE NUMBER OF OFFICERS INVOLVED

*"Will the number of police officers involved in the search be no more than is reasonably necessary in the circumstances?"* 

In *R. v. Golden*, the Supreme Court reflected that normally two persons (other than the person searched) must be present for a strip search. Most police services have adopted this approach in their procedures. Some services, due to

their limited size or remote location, may allow strip searches to be conducted by a single officer. Some jurisprudence also supports the presence of another officer in circumstances where the detainee is not cooperating or there is a threat of danger.<sup>91</sup> We saw no evidence that excessive numbers of officers participating in a strip search represents a systemic concern.

In my view, strip searches that are not conducted by the arresting or investigating officers represent a best practice. Indeed, our review revealed that officers brought in solely to conduct the search are often more meticulous in documenting the grounds for the search, the authorization for the search and the manner in which it was conducted. That being said, sometimes it is unavoidable that the search be conducted by the arresting or investigating officer.

# **RECOMMENDATIONS:**

28. Every police service in Ontario should ensure that their procedures provide that ordinarily, strip searches should be conducted by no more than two officers, unless security concerns compel the presence of additional officers. When that presence is required, the additional officer or additional officers should ordinarily remain outside the searching room, not facing the person to be searched, unless their active assistance is required. It represents a best practice for strip searches, where practicable, to be conducted by officers other than the arresting or investigating officer.

# THE MINIMUM FORCE NECESSARY

"What is the minimum of force necessary to conduct the strip search?"

In *R. v. Golden*, the Supreme Court disagreed with the suggestion that an arrested person's non-cooperation and resistance necessarily entitles police to engage in behaviour that disregards or compromises that person's physical and psychological integrity and safety. The Supreme Court stated that any application of force or violence must be both necessary and proportional in the specific circumstances.<sup>92</sup>

<sup>&</sup>lt;sup>91</sup> R. v. Poirier, 2016 ONCA 582 (CanLII), http://canlii.ca/t/gsm89; R v Muller, 2014 ONCA 780 (CanLII), http://canlii.

ca/t/gf6xd; R. v. Graham, 2016 ONCJ 698 (CanLII), http://canlii.ca/t/gvx9g

<sup>&</sup>lt;sup>92</sup> Golden, para 116.

The Search of Persons sample policy and procedure in MCSCS's Policing Standards Manual does not address use of force.

Ideally, strip searches should be conducted without any force or even any contact between the officer and the arrested person. If the officers are met with resistance, then the force used should be necessary and proportional to the circumstances.

Almost all services require members to note if any force was used during the search. From the cases we reviewed, force was noted in less than two per cent of strip searches. In those cases, the documentation reflected that the arrested person was belligerent and refusing to cooperate with the search.

Giving arrested persons the opportunity to remove clothing, as directed, on their own, represents an important best practice that is likely to de-escalate confrontation.

Ontario's Policing Standards Manual states, in the guidelines for procedures for Search of Persons, that police services should set out procedures for strip/ complete searches, including that the person be encouraged to remove their own clothing, unless safety requirements or destruction of evidence issues dictate otherwise.

Most police service procedures state that the arrested person must be given the option to remove their clothing themselves, but such procedures do not require officers to make note of whether the arrested person removed items of clothing themselves.

# **RECOMMENDATIONS:**

29. Every police service in Ontario should ensure that their procedures provide that, absent exceptional circumstances, arrested persons should be given the opportunity to remove their clothing, as directed by the police, on their own.

- 30. Every police service in Ontario should ensure their procedures direct officers to document whether arrested persons removed items of clothing themselves.
- 31. Every police service in Ontario should ensure their procedures reflect that officers are only to use force when necessary and in proportion to the resistance of the arrested person.

# THE PRIVACY OF THE SEARCHING AREA

*"Will the strip search be carried out in a private area such that no one other than the individuals engaged in the search can observe the search?"* 

In *Golden*, the Supreme Court specified that strip searches must be conducted at the police station except where there are exigent circumstances. Subsequent judicial decisions have reflected that a strip search should be conducted in as much privacy as possible considering the existing circumstances. This will generally require the use of a private room with the door closed, though safety concerns may justify an open door in limited circumstances.<sup>93</sup>

Ontario's Policing Standards Manual states "that police services should set out procedures for strip/complete searches including that a search be conducted in a place in which the privacy of the person can be reasonably assured, unless safety requirements dictate otherwise."<sup>94</sup>

All police services state in their procedures that a strip search must be conducted in a private area; however, very few specify a particular room where the search is to take place. Designating a specific room or area where strip searches are to be conducted represents a best practice, where feasible.

<sup>&</sup>lt;sup>93</sup> Ibid, para 102; D'Andrade; R. v. MacPherson, 2017 ONCJ 615.

<sup>&</sup>lt;sup>94</sup> Ministry of the Solicitor General. *Policing Standards Manual (2000)*, Search of Persons (LE-012). Ontario Ministry of the Solicitor General, February 2000.

# **RECOMMENDATION:**

32. Every police service in Ontario should consider whether they can designate a fixed location or fixed locations where strip searches are to be conducted, absent exigent circumstances. Of course, these fixed locations should be designed so as to promote privacy.

# THE SPEED OF THE SEARCH

*"Will the strip search be conducted as quickly as possible and in a way that ensures that the person is not completely undressed at any one time?"* 

In *Golden*, the Supreme Court did not provide any direction as to what constitutes a reasonable amount of time for a strip search to be conducted. There is also no direction in the Policing Standards Manual regarding the length of time a strip search should take. In my view, while it is important to reinforce the need for a strip search to be conducted quickly, it is impracticable to set time limits for such searches.

In our review, we found that officers and members infrequently documented the time a strip search commenced and the time it was completed. That being said, some police services (such as Toronto Police Service and Ontario Provincial Police) were fairly consistent in documenting the total length of time taken to complete a strip search. On average, Toronto Police Service officers completed the strip search in less than 10 minutes and Ontario Provincial Police officers completed the strip search in less than five minutes. There was no obvious systemic issue raised by the length of time taken by these services to complete their strip searches. Nonetheless, proper oversight and accountability would be enhanced through recording the commencement and completion times of strip searches and a requirement that a strip search of unusual duration be explained.

# **ENSURING AN ARRESTEE IS NOT COMPLETELY UNDRESSED**

*R. v Golden* adopts the English guidelines that provide that "[a]lthough a strip search may involve the removal of all clothing, it should be done in such a way that the person is never completely undressed."<sup>95</sup>

The intrusiveness of a strip search is reduced by ensuring that the detainee is never completely naked. This is adequately addressed in almost all of the services' procedures, although there is no requirement that officers document the sequence of removal of clothing and that items were put back on before the next items were removed. We saw instances in which officers did note the sequencing of removal and replacement of items of clothing. This represents a best practice. Of interest, those officers generally had detailed and complete notes on the strip searches conducted.

# **RECOMMENDATION:**

- 33. Every police service in Ontario should ensure that their procedures provide that officers note the time a strip search commenced and the time it was completed, and provide an explanation in writing for a strip search of unusual duration.
- 34. Every police service in Ontario should ensure that their procedures provide that:
  - (a) Detainees should never be completely naked, absent exigent circumstances.
  - (b) The removal of items of clothing should be done sequentially.
  - (c) Officers should document the sequence of removal and replacement of items of clothing.

# THE USE OF BODY SCANNERS

Recently, there has been discussion about the use of full-body scanners, such as those used in some airports, as an alternative to conducting strip searches or at least, as a means of reducing the number of strip searches required.

Currently, the main technology used in searches of persons are metal detector wands. They are generally unable to detect contraband such as drugs.

In 2016, MCSCS began an initiative to introduce full-body scanners at 26 adult provincial correction facilities over a two-year period. The scanners were first tested in a pilot project, and were found to be successful at locating external and internal contraband, including ceramic blades, pills, and marijuana.<sup>96</sup>

If these scanners have been approved for use within prison facilities, it is possible they could be approved for use by police services. However, they can cost approximately \$200,000. Such a cost might only be justified for the largest services.

In September 2018, Toronto Police Service began a full-body scanner pilot project to determine and evaluate the operational benefit of using such technology. The service is testing two different scanners over the six-month pilot project. These body scanners are capable of detecting metallic, plastic, biological and ceramic items on or inside a person's body. The system manufacturers state that the technology, which uses low-dose radiation, is safe, quick and shows a clear difference between human tissues and other materials.

# **RECOMMENDATION:**

35. I support the pilot project of Toronto Police Service to evaluate whether the use of full-body scanners can be used as a way to reduce the number of strip searches conducted by the service.

# VISUAL INSPECTION OF PRIVATE PARTS VERSUS PHYSICAL CONTACT

*"Will the strip search involve only a visual inspection of the arrestee's genital and anal areas without any physical contact?"* 

*R. v. Golden* found the guidelines from the English Police and Criminal Evidence Act (PACE) legislation to be in accordance with the constitutional requirements of the charter. The PACE Code of Practice states, in part, that "while a visual inspection of the genital and anal areas may be conducted, no physical contact may be made."<sup>97</sup>

<sup>&</sup>lt;sup>96</sup> Ministry of Community Safety and Correctional Services. "Ontario Introduces Full-Body Scanners to Adult Correctional Facilities." *Ontario Newsroom* May 3, 2016. https://news.ontario.ca/mcscs/en/2016/05/ontariointroduces-full-body-scanners-to-adult-correctional-facilities.html

<sup>&</sup>lt;sup>97</sup> Golden, para 58, 101.

The Supreme Court went on to state:

"For greater clarity, if it appears during the course of a strip search that the detainee is concealing a weapon or evidence inside a body cavity, and the detainee refuses to cooperate, the police officer must likely exceed the realm of the strip search and enter the realm of the body cavity search to obtain the object. More intrusive searches of the person such as this involve a higher degree of infringement of personal dignity and privacy as well as additional medical concerns. Accordingly, a higher degree of justification will be required before such a search can be carried out. In addition, more intrusive searches will be subject to greater constraints as to the manner in which they may be reasonably performed."<sup>98</sup>

In *R. v. Graham*, the accused was arrested on drug trafficking charges and strip searched. Police told him to remove his underwear and face the wall by placing his hands on the wall. He agreed. He was told to bend over and spread the cheeks of his buttocks. One of the searching officers said this was done to see if he had concealed anything in his buttocks. As the officer bent slightly, he observed the tail of a clear plastic item hanging from Mr. Graham's buttocks. The versions of events as to what transpired after that differed as between the various witnesses, including the accused. Ultimately, the court concluded that the police used some force to remove the item wedged into the accused's rectum.<sup>99</sup>

The trial judge found a charter violation, stating the following:

"While I accept the evidence of [the officer] that he didn't place his hands into Mr. Graham's rectum to remove the item, I cannot accept that he applied no force. Instead, I find that he held on to the item as he stated and when Mr. Graham would have eventually relaxed his butt muscles, it was pulled out manually. In my view, this is problematic because there's no evidence that at any point, Mr. Graham was told what had to be done to remove it and be given a chance to remove it himself. This despite the evidence of [another officer] that the usual practice is to tell a detainee that that the item would have to be removed for safety reasons and they would be given a chance to

<sup>98</sup> Ibid, para 87.

<sup>99</sup> R. v. Graham, 2016 ONCJ 698, para 26, 77. (CanLII), http://canlii.ca/t/gvx9g

remove it themselves. An atmosphere of mistrust, if that's what it was, doesn't legitimize this activity. Nor did the police avert to the possibility of keeping him handcuffed and taken to a hospital to have it medically removed. Simply relying on past experience that "[the hospital] won't remove it" isn't responsive to the circumstances of each strip search. Moreover, there didn't appear to be any urgency as a search warrant was being prepared."<sup>100</sup>

One of the points here is that a search of a vagina or rectum – particularly where physical contact or force is needed to remove an item from either – no longer constitutes only a strip search, rather than a body cavity search. The latter requires even greater justification in law.

The Policing Standards Manual states that police services should set out procedures for strip/complete searches including that the search be conducted in a manner that avoids unnecessary body contact.

Ontario Provincial Police include on their strip search form a check-box to reflect when a visual inspection was conducted and when physical contact took place. The OPP generally confirmed that no physical contact had taken place, though officers documented some circumstances in which physical contact had occurred.

# HOW EVIDENCE IN A BODY CAVITY WILL BE REMOVED

*"If the visual inspection reveals the presence of a weapon or evidence in a body cavity (not including the mouth), will the detainee be given the option of removing the object himself or of having the object removed by a trained medical professional?"* 

The Policing Standards Manual does not provide a definition of a body cavity search, but it does require police services to have procedures that address body cavity searches. It stipulates that "such searches be conducted in private by a qualified medical practitioner and other medical staff as required, and in the presence of a member of the police service of the same gender as the person to be searched."<sup>101</sup> The manual also suggests that police services set out a procedure regarding operational responsibility for authorizing a body cavity search.

<sup>&</sup>lt;sup>100</sup> Ibid, para 77.

<sup>&</sup>lt;sup>101</sup> Ministry of the Solicitor General. *Policing Standards Manual (2000)*, Search of Persons (LE-012). Ontario Ministry of the Solicitor General, February 2000.

Although this review is focused on strip searches, rather than body cavity searches, its examination of the underlying documentation in specific cases found instances in which items were found in body cavities.

Out of the strip searches cases whose underlying documentation was specifically examined, 20 referenced suspicion of an item in a body cavity. In 75 per cent of those cases, the items were either drugs or drug paraphernalia. The other 25 per cent included tobacco, fire starters or pieces of plastic. According to the documentation provided, in 13 cases the arrested persons agreed to remove the items themselves, while in the other cases they were transported to hospital for the removal.

The *Golden* decision dictates that in situations where an officer sees something hanging out of a body cavity after an arrested person's underwear has been removed, the officer is not permitted to forcefully remove the item, but is to provide the individual the opportunity to remove the material himself or the officer should seek the advice and assistance of a trained medical professional to ensure that the material can be safely removed.<sup>102</sup>

It is beyond the scope of this systemic review to define those circumstances in which prior judicial authorization need be obtained to effect a body cavity search.

# **RECOMMENDATIONS:**

- 36. Every police service in Ontario should ensure that their procedures provide that strip searches should generally involve only a visual inspection, rather than physical contact and that any physical contact should be documented.
  - (a) Such procedures should clearly articulate when a strip search becomes a more intrusive body cavity search.
  - (b) Procedures should separately address when and how body cavity searches can and should be conducted.

<sup>&</sup>lt;sup>102</sup> Golden, para 114.

(c) Such procedures should also provide that if a visual inspection reveals the likely presence of a weapon or evidence in a body cavity, the arrested person should be given the option of removing the items themselves or having the items removed by a trained medical professional. Otherwise, the police should seek the advice and assistance of a trained medical professional to ensure that the items can be safely removed. The ultimate manner of removal should be documented.

# PROPER RECORDING OF THE REASONS FOR AND MANNER OF THE SEARCH

*"Will a proper record be kept of the reasons for and the manner in which the strip search was conducted?"* 

*R. v. Golden* does not offer guidance as to what is considered a "proper" record. Subsequent jurisprudence has emphasized that the failure to keep a proper record of a strip search may render the strip search unreasonable.<sup>103</sup>

The Search of Persons guidelines in the Policing Standards Manual requires police services to establish procedures for documenting searches of persons including the circumstances when a strip/complete search must be reported.

Most police service procedures simply state that strip searches must be documented in officers' notes. Others require more information to be documented, such as specifically requiring documentation of the grounds for the strip search, where it took place, who conducted it and the extent to which the search was authorized in advance.

Toronto Police Service, for example, states that full details of **all** searches shall be recorded in the memorandum book, including the grounds for the level of search conducted. Appropriate entries shall be recorded in the applicable eReport for all Level 3 and Level 4 searches.

<sup>&</sup>lt;sup>103</sup> R. v. Bookal, 2016 ONSC 2941 (CanLII), http://canlii.ca/t/gr5m9; McPhail, para 23-24, 35.

The quality of officers' notes regarding strip searches varies greatly across the province. The quality of these notes also differed greatly within large police services, such as the Toronto Police Service and the Ontario Provincial Police. Some officers provided detailed information that exceeded information mandated by their own services. Not surprisingly, those officers generally provided clear articulation of the basis for their searches and appeared to be involved in less questionable searches.

In a number of instances, officers failed to properly articulate the grounds for the strip searches conducted. This was sometimes reflective of poor recording practices. We saw instances in which the evidence revealed stronger grounds than those articulated in the officers' own notes. For example, the evidence might reveal that the detainee was arrested for possession of drugs and admitted to currently hiding drugs on their person, but the noted grounds for the strip searches were "officer safety and prisoner safety." That being said, it was also obvious that the failure of officers to properly articulate the grounds for the strip searches conducted was sometimes reflective, not merely of poor recording practices, but the absence of adequate grounds for the searches conducted.

In their submissions to my review, some police services observed that the problem rested, in part, on the failure to have consistent provincewide requirements for what must be documented. A number of these police services also recommended that this documentation should be done electronically to ensure searchability, monitoring and accountability. I agree.

As well, officers should be assisted in properly documenting strip searches through the use of a strip search form with specific fields to be filled out. Officers should be required to provide any supplementary information on the form. Forms that provide only checkboxes tend to encourage routine strip searches with *pro forma* responses or inadequate reporting.

Appendix B is a sample strip search form (largely drawn from the OPP's form) that includes checkboxes for some aspects highlighted in *Golden* and space to articulate the grounds.

Services should treat improper record-keeping and note-taking seriously. "The absence of a record might carry an implicit or subtle message of impunity for police engaged in these searches, the notion being that, if there is no record, there will be no review."<sup>104</sup> As data retention is not consistent or standardized throughout the province, I agree with the courts that "it is impossible to know just how endemic the problem is, largely because of the failure of the police to keep proper records of the strip searches that are conducted."<sup>105</sup>

The question remains whether strip searches should be recorded by video or audio recording. Strip searches themselves should never be video recorded. This would represent an intrusion into the detainee's privacy, and an affront to that person's personal dignity, even if access to the video recording were highly restricted. I support the use of audio recording as an accurate, non-intrusive way to preserve an accurate, full record of what transpired during the search itself, especially if officers are trained to describe what is transpiring as it occurs and seek verbal acknowledgements from the detainee throughout the process. I was advised that Waterloo Regional Police Service currently audio records strip searches. Toronto Police Service recommended the adoption of audio recording as well.

# **RECOMMENDATIONS:**

- 37. Every police service in Ontario should ensure that their procedures provide that all strip searches must be fully documented, including:
  - (a) The grounds for such a search.
  - (b) The officers conducting the search.
  - (c) The manner in which the search was conducted, including what items were removed or replaced and in what sequence, whether items were removed by the detainee or the officer, and what, if any, physical contact accompanied the search.

<sup>&</sup>lt;sup>104</sup> R. v. Muller, 2011 ONSC 4892, para 85. (CanLII), http://canlii.ca/t/fn17r

<sup>&</sup>lt;sup>105</sup> Ibid, para 84.

- (d) The supervisor authorizing the search.
- (e) The time frame within which the search was conducted.
- (f) A description of items found as a result of the search, and where they were found.
- (g) If it appears that a bodily cavity contains an item to be seized, what steps were taken to obtain the items, including any options given to the detainee.
- (h) What, if any, exigent circumstances existed that required deviation from established procedures.
- 38. Based on the sample strip search form contained in this report, every police service in Ontario should adopt a strip search form to enhance proper documentation of strip searches.
- 39. Such procedures should provide direction on when the strip search form or parts thereof should be completed.
- 40. These forms should be accessible electronically.
- 41. There should be no video recording of strip searches. However, police services may establish procedures to video record the process leading up to the strip search, including the articulation of the grounds for the strip search.
- 42. Unless impracticable to do so, every police service in Ontario should establish procedures to audio record strip searches. Officers should be trained on audio taping procedures, including the need to verbalize what is transpiring and seek verbal acknowledgements from the detainee throughout the search.

# SPECIAL CONSIDERATIONS

In *R. v. Golden*, the Supreme Court highlighted the fact that strip searches can be more traumatizing to people based on their history and life experiences.<sup>106</sup> For example, people who have been sexually assaulted may be particularly traumatized by a strip search. This is only one of the special considerations that should inform procedures.

# RACE

In Chapter 1, I reflected that historically, Ontario police services have not generally kept race-related statistics of their interactions with members of the public that resulted in strip searches. Durham Regional Police Service, Ontario Provincial Police and Toronto Police Service were able to provide us with some race-related data pertaining to strip searches.

Race of Person Strip Searched**	Percentage
White	52.94
Black	37.91
Arab/West Asian	1.96
East Asian	0.65
Aboriginal	1.31
Latin American	0.65
South Asian	3.92
Unknown	0.65

#### Table 14: Durham Regional Police Service Race-related Data\*

\* Represents data from strip search cases supplied to the OIPRD for 2014, 2015 and 2016.

\*\* Race terminology as used by the service

#### Table 15: Ontario Provincial Police Race-related Data\*

Race of Person Strip Searched**	Percentage
White	66.67
Black	2.08
South East Asian	2.08
Asian	2.08
Aboriginal	14.58
Left blank	8.33

\* Represents data from strip search cases supplied to the OIPRD for one month in each year, 2014, 2015 and 2016.
 \*\* Race terminology as used by the service

#### Table 16: Toronto Police Service Race-related Data\*

Race of Person Strip Searched**	Percentage
White	44.48
Black	27.67
Brown	13.92
Asian	5.6
Aboriginal	4.24
Unknown	3.4
Nothing Entered	0.68

\* Represents data from strip search cases supplied to the OIPRD for one week in each year, 2014, 2015 and 2016.

\*\* Race terminology as used by the service

According to Statistics Canada's 2016 Census Profile, only nine per cent of Toronto's population identified themselves as black and only eight per cent of Durham region so identified.<sup>107</sup> Across Ontario, 2.8 per cent of the population identified themselves as Indigenous.<sup>108</sup>

In *R. v. Golden*, the Supreme Court acknowledged that "African Canadians and Aboriginal people are overrepresented in the criminal justice system and are therefore likely to represent a disproportionate number of those who are arrested by police and subjected to personal searches, including strip searches."<sup>109</sup>

Not surprisingly, different views persist as to why that is so, and the precise role that race plays not only in decisions to arrest, but in the exercise of discretion as to whether to strip search those arrested. Sustained, consistent and provincewide race-related statistics pertaining to strip searches (together with the improvements I have recommended more generally on how strip searches are documented and statistics about them collected) will better enable an evidence-based evaluation of the role that race plays in police officer decisions whether to strip search individuals. Such statistics will permit, among other things, an analysis of the extent to which differential treatment takes place based largely or exclusively on race.

Police service procedures should specifically address how race-related information should be collected by front-line officers. It is relatively easy to recommend that race should be documented by the searching officers, and that this information should be included in the strip search form. However, at present, officers often rely upon their own perceptions in determining what race should be noted. For example, Toronto Police Service provides a space for race and for place of birth on its strip search form. In one instance, the race was indicated as "white" and the place of birth was "Iran." That person may or may not self-identify as "white."

<sup>&</sup>lt;sup>107</sup> Statistics Canada. 2017. Toronto, C [Census subdivision], Ontario and Ontario [Province] (table). Census Profile. 2016 Census. Statistics Canada Catalogue no. 98-316-X2016001. Ottawa. Released November 29, 2017. https:// www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm?Lang=E

<sup>&</sup>lt;sup>108</sup> Statistics Canada. 2017. Focus on Geography Series, 2016 Census. Statistics Canada Catalogue no. 98-404-X2016001. Ottawa, Ontario. Data products, 2016 Census. https://www12.statcan.gc.ca/census-recensement/2016/ as-sa/fogs-spg/Facts-PR-Eng.cfm?TOPIC=9&LANG=Eng&GK=PR&GC=35

<sup>&</sup>lt;sup>109</sup> Golden, para 83.

The ideal situation is to reflect how detainees self-identify in completing relevant documentation. However, that too has its challenges.

In 2017, the Ontario government passed the Anti-Racism Act, 2017. The act contemplates that data standards will be established for the collection, use and management of information, including personal information, to identify and monitor systemic racism and racial disparities.<sup>110</sup>

Some government ministries and agencies, including the OIPRD, are now collecting race data, according to the data standard created by the Anti-Racism Directorate. This standard provides a template that police services could use to collect race data and to ensure that services use the same race categories across the province. The standard sets out race categories and provides examples.

Race Categories	Examples/Descriptions
Black	African, Afro-Caribbean, African-Canadian descent
East Asian	Chinese, Korean, Japanese, Taiwanese descent
Indigenous	First Nations, Métis, and/or Inuit descent
Latino	Latin American, Hispanic descent
Middle Eastern	Arab, Persian, West Asian descent, e.g., Afghan, Egyptian, Iranian, Lebanese, Turkish, Kurdish, etc.
South Asian	South Asian descent, e.g., East Indian, Pakistani, Bangladeshi, Sri Lankan, Indo-Caribbean, etc.
Southeast Asian	Filipino, Vietnamese, Cambodian, Thai, Indonesian and other Southeast Asian descent
White	European descent
Another race category not described above	Please specify

<sup>&</sup>lt;sup>110</sup> Anti-Racism Act, 2017, S.O. 2017, c. 15. S.6 (1).

# **RECOMMENDATION:**

43. Every police service in Ontario should ensure that they collect racerelated information pertaining to strip searches. Their procedures should address how that information should be collected and recorded. Race categories and how such information is collected should be uniform across the province, and informed by best practices identified by the Anti-Racism Directorate, in consultation with the Ministry of Community Safety and Correctional Services.

# RELIGION

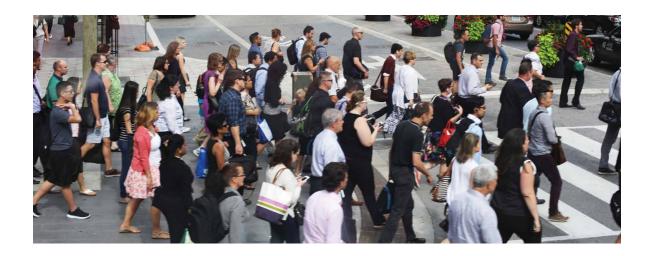
Strip searching individuals who are observant persons of faith raises special considerations. Policing within the context of our multicultural society requires that police be aware of the most common issues that may arise in this regard.

Some examples suffice. If a Sikh man is arrested, the presence of a kirpan should not be used as justification for a full strip search based on the purported possession of a weapon. Absent exigent circumstances, officers should allow an arrested person to remove a turban or analogous religious items.

Indigenous medicine bags or bundles should be treated with respect during a strip search because of their importance as a sacred item. A medicine bag or bundle should not be treated as evidence of the existence of drugs or weapons. Officers should document the steps taken regarding the handling and storage (if necessary) of them.

The removal of a Muslim woman's burka, hijab or niqab would be akin to a strip search for the female. Only female police members should search a Muslim woman who has been arrested. This includes removal of a burka, hijab or niqab. Where the clothing constitutes evidence, or the female is suicidal, she should be provided with alternative clothing that complies with the arrested person's religious beliefs. Officers should document the steps taken to accommodate an arrested person's religious beliefs.

Barrie Police Service has a very well-developed section on the search of Sikhs and Muslims within its strip search procedures.



# **RECOMMENDATION:**

44. Every police service in Ontario should ensure that their procedures address the accommodation of observant persons of faith.

# YOUTH

Strip searches may be especially traumatic for a young person who may have limited understanding of police processes. Officers should treat these cases with heightened care. Special procedures for strip searches of young persons should be adopted by police services. A "young person" refers to a person who is 12 years old or older, but less than 18 years old.

In *R. v. S.F.*, two female youth were charged with robbery of another girl. The two girls attended Toronto Police Service with their parents to turn themselves in. The officers decided to hold the youth for a show cause hearing and conducted strip searches. The court made reference to the fact that the parents were never notified that their daughters were being strip searched.<sup>111</sup>

Many services do not have a section in their procedures addressing the search of youths. Some services simply refer to the Youth Justice Criminal Act (YCJA),

<sup>111</sup> *R. v. S.F.*, para 7.

without specific directions on special precautions that should be taken when strip searching a minor. In our review of individual cases, we found 30 instances in which a youth was strip searched. There were no indications in any of the officers' notes that there were extra steps taken.

In its procedure, Barrie Police Service provides specific direction for strip searches involving youth, indicating that officers should allow the person being searched to request an adult of his/her choice be present. I agree that this represents a best practice to be incorporated into procedures.

# **RECOMMENDATION:**

45. Every police service in Ontario should ensure that their procedures provide for special procedures pertaining to strip searches of young persons. These should include providing young persons with the option of having an adult or guardian present, absent exigent circumstances.

# DISABILITY AS DEFINED UNDER THE ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT (AODA)

All Ontario municipal, regional and provincial police services have a duty to accommodate persons with disabilities under the Accessibility for Ontarians with Disabilities Act (AODA)<sup>112</sup> and the Human Rights Code.<sup>113</sup>

Police services should, on a case-by-case basis, consider all available accommodation options when assessing an arrested person's requests for accommodation related to a strip search. Where an individual cannot be accommodated, police members should articulate, in their notes and/or the strip search form, the accommodations options considered and the reasons why the individual could not be accommodated.

<sup>112</sup> Accessibility for Ontarians with Disability Act, 2005, S.O. 2005, c.11. https://www.ontario.ca/laws/statute/05a11

<sup>113</sup> Human Rights Code, R.S.O. 1990, c. H.19. https://www.ontario.ca/laws/statute/90h19

Barrie Police Service requires its officers to contact an adult or guardian before strip searching someone who has a disability. While it is commendable that the service gave consideration to the special needs of someone who has a disability, we have to take care to ensure that unwarranted assumptions are not made about persons with disabilities. The point here is to ensure that persons with disabilities are appropriately accommodated where possible. This might mean that, in some circumstances, they should be offered the opportunity to contact someone to assist in responding to direction or requests by the police or to assist in how they are accommodated.

In the cases that we reviewed, there were no cases identified where a person with a disability was strip searched. Nevertheless, for the reasons earlier provided, this does not mean it never happens.

# **RECOMMENDATION:**

46. Every police service in Ontario should ensure that their procedures address the accommodation of persons with a disability.

# CHAPTER 5: officer training regarding strip searches

Training officers on the law pertaining to strip searches is of obvious importance. Officers cannot be expected to understand and apply the law related to strip searches if their training is inadequate, inaccurate or outdated. This means that new officers must be trained on this topic at entry level and that training must be ongoing. It also means that training must be consistent across the province, both in content and in availability, allowing only for such variations as reflect local circumstances and required differences in local procedures. This means that officers should not be trained one way at the Ontario Police College and another way by their own police services.

Training must extend both to front-line officers who are most likely to conduct strip searches or to evaluate whether strip searches are warranted, and to supervisors who must authorize strip searches and who provide oversight to ensure that strip searches are conducted and documented properly.

The number and nature of unlawful strip searches conducted in this province tell us that a number of officers do not understand their legal obligations pertaining to strip searches, likely due in part to deficiencies in training, or have forgotten or ignored what they learned, likely due in part to a failure to refresh or reinforce their training in a timely and effective way.

The most comprehensive and accurate procedures are ineffectual if officers do not adhere to them. Training is one means of promoting such adherence. Accordingly, this chapter addresses the state of existing training relating to strip searches, and how the content and frequency of, and accessibility to, that training can be improved.

All municipal, regional and provincial police officers in Ontario are required to attend the Basic Constable Training course at the Ontario Police College (OPC). The OPC is part of the Public Safety Training Division within the Ministry of Community Safety and Correctional Services (MCSCS). The OPC's 12-week training program is a condition of employment with a police service, and is

designed to prepare newly hired police officers to safely and effectively perform their duties. Throughout their careers, police officers may also return to the OPC for further or specialized training.

Individual police services also train their officers through in-service training. Some have their own training facilities that cadets attend before and after the OPC basic training. As officers progress through their careers, they receive instruction to refresh their skills, along with a variety of additional or skills-upgrading training.

Officers also learn from colleagues on the job and through mentorships and job shadowing.



# ONTARIO POLICE COLLEGE TRAINING PERTAINING TO STRIP SEARCHES

In the OPC Basic Constable Training course, training on searches takes place over four 90-minute periods.<sup>114</sup> The OPC reported that the course trains officers on a wide variety of search-related issues, including how to search an individual, motor vehicle, a house or other place for weapons, items that might facilitate escape and of course, for evidence. It also trains officers on the strict rules in place for conducting searches, highlighting the consequences if the rules are not followed.<sup>115</sup>

We were advised that the OPC course addresses strip searches under the heading of Inventory Searches and Strip Search Incident to Arrest, with reliance on *R. v. Golden*. We were also advised that the course requires officers to demonstrate an understanding of a wide range of search topics:

- 1. The meaning of the term "reasonableness"
- 2. The meaning of the terms "search" and "seizure"
- 3. The term "judicial pre-authorization"
- 4. The concept of reasonable expectation of privacy
- 5. The consequences of citizen's rights violations with respect to judicial proceedings

<sup>&</sup>lt;sup>114</sup> Ontario Police College correspondence to the OIPRD, Jan. 30, 2017.

<sup>&</sup>lt;sup>115</sup> Ontario Police College correspondence.

- 6. The concept of informational searches
- 7. The phrase "implied licence to knock"
- 8. The rights and the limitations of police to search incident to arrest
- 9. The court's view on inventory searches
- 10. The court's view on strip searches
- 11. The plain view doctrine
- 12. The meaning of exigent circumstances
- 13. The difference between investigative detention and arrest
- 14. The conditions that must exist to initiate investigative detention
- 15. The limitations of investigative detention
- 16. The limitations imposed by *R. v. Feeney* relating to approaching or entering a dwelling for the purpose of arrest<sup>116</sup>

Officers may also return to the OPC to obtain further or specialized training, which may or may not include strip search training. Other courses that include a section on searches include the Sexual Assault Investigator course and the Search Warrant course.<sup>117</sup>

<sup>116</sup> Ontario Police College correspondence.

<sup>&</sup>lt;sup>117</sup> Ontario Police College correspondence.

# TRAINING AT INDIVIDUAL POLICE SERVICES

As already indicated, officer training does not end with basic training at the OPC. Officers are required to complete additional training on an annual and biennial basis. Some of this training takes place at the OPC and some at the police service itself. A few of the larger Ontario police services have their own training units or facilities that cadets attend before and after the OPC basic training. For example, the OPP has the Provincial Police Academy and Toronto Police Service has the Toronto Police College. Experienced officers will also attend the police service training facility for ongoing training and upgrading.

Training at the OPP's Provincial Police Academy regarding strip searches includes a question in the Recruit Course Training Standards "In-Bound" examination regarding the considerations that need to be addressed in order to conduct a strip search. The examination is taken up in class and a number of cases are reviewed, including *R. v. Golden*. The Provincial Police Academy General Investigation Training course contains a PowerPoint slide describing strip searches as part of the "Search With or Without a Warrant" topic. The slide, on strip search incident to arrest, contains discussion bullet points on various subjects including *R. v. Golden*.

The Toronto Police College delivers training on strip searches, referred to as "Level 3 searches" in a number of different courses. Some course lessons address Level 3 searches directly and are concerned with what circumstances lawfully and procedurally justify a strip search. Other lessons address a broader range of skills that have an impact on the assessments, and explanations (articulation) of actions such as Level 3 strip searches. The content of the Level 3 strip search-specific course includes:

- · An officer's authority to conduct a search of a person
- The lawful purpose of a search being connected to the arrest or information gained through the arrest, ensuring officers assess each situation individually
- The difference between a Level 2 and a Level 3 search and the requirement that the level of search and intrusion on a prisoner be directly proportional to the reasonable justification for the search. The decision to conduct a Level 3 search must be consistent with Toronto Police Service procedures and judicial expectations provided in *R. v. Golden*

The format for Toronto Police College training varies to include lectures, discussion, group work, practical exercises and readings.

The vast majority of police services with less than 100 officers provides no training on strip searches. Other larger services include strip search training in their "block" training, or as part of Use of Force training. A number of police services require or direct their officers to review procedures, such as those covering Arrest, Security, Prisoner Care and Control for instruction on conducting strip searches.

# DEFICIENCIES IN TRAINING REGARDING STRIP SEARCHES

In our review, we found inconsistencies in officer note-taking, officer understanding of proper grounds for conducting a strip search, what constitutes a strip search and in how officers justify strip searches. These inconsistencies were sufficiently prevalent to constitute a systemic issue. Training deficiencies, or failures to adhere to existing training, were identified as issues in a number of judicial decisions. For example, in *R. v. Bonds*, the court was "appalled by the fact that a strip search was undertaken … in the presence of, and with the assistance of at least three male officers. It is quite evident that none of these officers have received gender training, and that they do give only lip service to female dignity and privacy."<sup>118</sup>

Officers showed inconsistency in approach across the province and within police services themselves. It was obvious that existing training is insufficient to ensure that officers comply with the law. In fairness, the task will be made significantly easier if consistent standards are adopted across the province.

Training on strip searches cannot be confined to front-line officers. Updated training for senior officers, especially those who authorize strip searches, is key to ensuring that only lawful strip searches occur.

<sup>&</sup>lt;sup>118</sup> Bonds, page 11.

In a 2018 case, *R. v. Bruce*, a woman was arrested by Toronto Police Service for driving while intoxicated and the officer found a small amount of marihuana in her purse (although she was not charged with possession). Based on the facts, the arresting officer recommended only a frisk search, but the supervising officer directed a strip search. The court found the search to be unreasonable and unnecessary and excluded the evidence obtained, stating:

The arresting officer understood and articulated reasons why it was neither reasonable nor necessary to subject this defendant to a strip search. By contrast, [the sergeant] made little effort to inform himself about the defendant's individual circumstances, as required in *Golden*, and mandated by the TPS Protocol for Level 3 searches ... [the sergeant's] wish to ensure there were no more drugs was of a general nature and likely routine.<sup>119</sup>

We found inconsistencies across the province in the frequency and content of training on strip searches.

Approximately 26 per cent of Ontario police services include a section on strip searches within their annual refresher course. Another seven per cent offer a course either biennially or every three years. The remaining services either confirmed that they do not provide any training on strip searches or did not provide any information about in-service training. Some services stated that they did not have any formal training about strip searches, but that they were proactively creating new training. Windsor Police Service responded to our review by indicating that it was preparing to create a training package, in conjunction with the OPC, to provide standardized instruction and refresher training regarding strip searches.



All services should include a strip search module in their annual or biennial training to all levels of staff who participate in the strip search process. The frequency of such training (annual or biennial) may depend on the prevalence of strip searches within the police service. The training should involve scenarios that test officers' understanding of when a strip search can be conducted, how to articulate the grounds, and how the strip search itself should be conducted. The *R. v. Golden* decision, including the 11 PACE questions that guide how, when and where a strip search may be conducted, along with other relevant case law should figure prominently in the training. Of the services that already provide regular training, most confirmed that the training included a presentation on *Golden*, plus scenarios with discussion.

Toronto Police Service employs a "Think-Act-Explain" model, which trains officers to conduct assessments of actions and articulate those actions. This would be relevant for training officers on strip searches as they need to practice assessing and developing lawful grounds for a strip search and articulating those grounds. All services should ensure that their training allows for officers to independently practice assessing and developing lawful grounds for a strip search and articulated those grounds. Even for services that provide annual training, there must also be an audit process to review the training on an ongoing basis, as well as officers' knowledge, to ensure that they are retaining and applying existing procedures and best practices. As reflected earlier in this report, effective oversight and accountability may require that officers who have been the subject of adverse judicial findings should, at the very least, be identified for additional instruction, direction or training.

I believe that efforts to improve officer performance are ongoing in police services across the province. However, as in any field, it is a challenge to consistently and effectively transform training into acceptable officer behaviour on the ground. The existence of systemic issues around strip searches in Ontario compels MCSCS, police service boards and police services to scrutinize and improve upon existing training.

# **RECOMMENDATIONS:**

- 47. The Ministry of Community Safety and Correctional Services is mandated to develop and promote programs to enhance professional police practices, standards and training. The ministry should develop guidelines for training specific to strip searches that are informed, in part, by the findings and recommendations contained in this report.
- 48. The Ontario Police College (OPC) should develop a standard training model specifically regarding strip searches that covers all aspects of *R. v. Golden*, along with other relevant jurisprudence. The format should include scenarios and a qualifying test for supervisors, officers and members who are authorized to search a person. The OPC should provide a version of this training through the Canadian Police Knowledge Network, so that more remote police services have ready access to it.

- 49. Every police service in Ontario should incorporate training on strip searches into their annual or biennial training. The training should include a review of all aspects of *R. v. Golden* and other relevant jurisprudence, as well as scenarios and experiential training so that officers practice articulating grounds and conducting a strip search in a variety of situations.
- 50. Every police services board in Ontario should ensure that their policies provide appropriate direction to police services on (a) the creation or modification of procedures to fully address strip searches, and (b) the training respecting strip searches. Such policies should be informed by the contents of this report.



# CHAPTER 6: conclusion



Eighteen years ago, the Supreme Court of Canada recognized that strip searches are inherently humiliating and degrading. It gave careful direction on how and when such searches can lawfully be conducted. Despite this direction, police regularly conduct strip searches in violation of the law. This comes at a high cost – to those directly affected by a highly intrusive search, and to the public and the justice system, especially where an unlawful search results in the exclusion of evidence or the stay of charges.

I was compelled to act. Rather than address the issue by just investigating individual cases for possible misconduct, I examined the issue at the systemic level. That examination revealed serious deficiencies in existing procedures, uneven, inconsistent treatment of arrested persons across the province, and inadequacies in training and knowledge of front-line officers and supervisors on this important topic. There is not even a common understanding across the province on what constitutes a strip search and what does not.

Moreover, serious concerns exist as to the role that race plays in whether and how a strip search is conducted. The inadequacy of existing data collected by police prevents the police, police services boards and oversight agencies from fully addressing these concerns.

Simply put, the *status quo* is unacceptable.

This report sets out the systemic issues identified across the province, and makes recommendations for change. They include recommendations to change existing policies, procedures and practices, training and the collection of relevant data.

I was pleased to see that some police services treated this systemic review as a call for action, and began to re-evaluate their existing procedures before our work was done. Toronto Police Service, whose officers conduct the most strip searches in this province, introduced some new measures, including a full-body scanner pilot project to address the concerns identified during our review. Much work is left to be done.

My recommendations provide a blueprint for best practices in policing. This spotlight on strip searches can only improve policing in this province, and in so doing, enhance the administration of justice and the lives of all members of our communities.

## APPENDIX A: TEMPLATE FOR STRIP SEARCH PROCEDURES

### **SUBJECT: STRIP SEARCHES**

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## 1.0 Purpose

These procedures outline the requirements that govern this Police Service's members as to when strip searches may be conducted and how they are to be conducted. These requirements are derived from statutes, including the Criminal Code of Canada, the Canadian Charter of Rights and Freedoms (the charter) as interpreted by the courts, and from this Police Service's own identification of best practices. These procedures should be read in conjunction with related procedures.

[NOTE: A Police Service may choose to list the related procedures, such as:

- Evidence
- Arrest
- Prisoner Care and Control
- Search of Person
- Frisk Search
- · Body Cavity Search]

These procedures cannot anticipate every factual situation that may face a member or a supervisor, who must decide whether to conduct or authorize a strip search and how to conduct any such strip search. Where these procedures do not specifically address a factual situation, members should be guided by the spirit and intent of these procedures and, where applicable, seek direction from a supervisor.

## 2.0 Definitions

Arrestee: The person under arrest.

**Body Cavity Search:** The search of the arrestee's vagina and/or rectum, involving physical contact and/or internal inspection. Body cavity searches are governed by the Police Service's Procedures on Body Cavity Searches. [NOTE: This template contemplates that the Service will have separate procedures on body cavity searches. The Service may also choose to deal with body cavity searches in a separate section within the same procedures.]

Child: A person under the age of 12.

**Disability:** Disability is defined under the Accessibility for Ontarians with Disabilities Act as follows:

- (a) Any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) A condition of mental impairment or a developmental disability,
- (c) A learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) A mental disorder, or
- (e) An injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997; ("handicap")

Field Search: A search not conducted inside a police station.

**Frisk Search:** A manual search of the clothed body, that may include the removal of clothing that does not expose a person's undergarments or the areas of the body normally covered by undergarments, but may include the removal of clothing such as belts, footwear, socks, shoes and extra layers of clothing. A frisk search may also include a visual search of the mouth, nose, hair, and ears.

**Gender Identity:** A person's internal and deeply felt sense of being a man, a woman, both, neither, or having another identity on the gender spectrum.\*

**Intersex:** A person born with reproductive systems, chromosomes or hormones that are not easily characterized as male or female.\*

**Reasonable and Probable Grounds** or **Reasonable Grounds**: Unless the context suggests otherwise, "reasonable and probable grounds" and "reasonable grounds" are synonymous. Officers have reasonable grounds if they subjectively believe, based on grounds that can be objectively articulated, that something is likely or probably true. Reasonable grounds justifying an arrest are different than reasonable grounds justifying a strip search.

**Searching officer:** Unless the context indicates otherwise, a searching officer includes all those members who conduct or assist another member in conducting a strip search.

**Split Search:** The systematic strip search of a transsexual or intersex person, where a female officer searches areas of the body near the female breasts and/or genitalia, and a male officer searches areas of the body near the male genitalia.

**Strip Search:** The removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person's private areas, namely genitals, buttocks, breasts (in the case of a female), or undergarments.

**Transgender:** Refers to a person whose gender identity differs from the one associated with their birth-assigned sex. The term "trans\*" includes all transgender, non-binary and gender conforming identities, while "trans" (without the asterisk) is used to describe trans men and trans women. The term "transgender" as a noun and "transgendered" are to be avoided.\*

**Transsexual:** A person who has desire or has had treatment to make their physical appearance more consistent with their gender identity.\*

Young Person: An individual 12 years and older, but younger than 18.

\*Definition reflects terminology used by the Ontario government (February 2018).

### 3.0 General

The Supreme Court of Canada in *R. v. Golden* states that strip searches are inherently humiliating and degrading for arrestees regardless of the manner in which they are carried out. Section 8 protects everyone from unreasonable searches or seizures. Non-compliance with section 8 of the charter may result in the exclusion of evidence obtained by the police or the dismissal, stay or withdrawal of charges against the arrestee.

#### **3.1 STRIP SEARCH PRINCIPLES**

- (a) Strip searches are inherently humiliating and degrading for arrestees regardless of the manner in which they are carried out.
- (b) The threshold for conducting a strip search is reasonable and probable grounds to justify a strip search. The meaning of "reasonable and probable grounds" in this context is explained in s. 3.2 below.
- (c) Strip searches may not be carried out as a matter of routine. The need for a strip search and the manner in which it is conducted must be considered on a case-by-case basis.
- (d) A strip search will always be unreasonable if it is carried out abusively or for the purpose of humiliating, punishing or exerting authority over the arrestee.
- (e) All members must treat every arrestee with respect and sensitivity. Strip searches must be conducted in a manner that ensures the health and safety of all who are involved.

#### 3.2 R. V. GOLDEN TEST

- (a) A strip search may only be conducted incident to a lawful arrest.
- (b) The existence of reasonable and probable grounds to arrest does not confer upon officers the automatic authority to conduct a strip search.
- (c) To conduct a strip search, searching officers must also have reasonable grounds to believe (and subjectively believe) that the strip search is necessary:
  - i. For the purpose of discovering weapons in the arrestee's presence (that is, for the safety of officers, the arrestee or others), or
  - ii. For the purpose of discovering evidence related to the reasons for the arrest, in order to preserve it and prevent its disposal

- (d) Searching officers and supervisors must be able to articulate the objective factors that support the existence of reasonable grounds, and must document those factors in their notebook/the strip search form.
- (e) A belief that reasonable grounds exist must **not** be based on a **routine** decision to strip search everyone based, for example, on the offence charged. The **possibility** that an arrestee may be concealing evidence or weapons on their person is not sufficient to justify a strip search.
- (f) The strip search must be conducted in a reasonable manner.

#### **3.3 NOT VALID GROUNDS**

- (a) Any of the following circumstances, **standing alone**, do **not** provide reasonable grounds to justify a strip search:
  - i. The arrestee faces Controlled Drugs and Substances Act charges
  - ii. The arrestee faces weapons charge
  - iii. The arrestee has a history of drug use
  - iv. The presence of an underwire bra, string bikini or lace bra
- (b) If an arrestee will be entering the general prison population, this **may** support the need for a strip search based on safety concerns, depending on the totality of circumstances.

### **4.0 Strip Search Processes**

#### 4.1 LOCATION

- (a) Strip searches should only be conducted at the police station, except where:
  - i. There are exigent circumstances, and
  - ii. The searching officer and/or supervisor believe on reasonable grounds that it is necessary to conduct the search in the field and not at the station
- (b) If a member believes that the arrestee is hiding an item on their body, the officer should consider options as an alternative to a strip search in the field, such as handcuffing the arrestee and ensuring that an officer remains in close proximity to the arrestee (for example, in the back of the police cruiser) during transportation to the station. Such an alternative need

not be employed if the continued presence of the hidden item poses an immediate danger to the safety of the arrestee or others that cannot be adequately addressed through such an alternative.

(c) Absent exigent circumstances, a strip search should be conducted in a designated room within the station or otherwise, in a private area, such that no one other than the searching officers can observe the search.

#### 4.2 SAFETY

- (a) A frisk search and/or wand search should generally be conducted before any strip search is conducted or decided upon, especially where a frisk search and/or wand search may remove the necessity for a subsequent strip search.
  - i. Members must record the frisk and/or wand search in their notebook/ the strip search form and the results, if any, produced as a result of the strip search.
- (b) Frisk/wand search results:
  - Members may be justified in conducting a strip search where a frisk search provides grounds supporting the presence of a hidden weapon or evidence on the arrestee's body.
  - ii. If the frisk and/or wand search do not provide such grounds, the member should not conduct a strip search to locate a weapon or evidence unless the member can articulate in their notebook/the strip search form reasonable grounds for believing that the arrestee is concealing a weapon or evidence that would otherwise not be discovered by a frisk and/or wand search.
- (c) Members **may** be permitted to strip search arrestees who are entering a general prison population or coming into contact with other prisoners.
  - i. The member must specifically record in their notebook/the strip search form that the arrestee will be entering the general prison population.
- (d) Underwire bras, string bikinis and lace bras must not be removed as a matter of routine.
  - i. Members must articulate in their notes/the strip search form reasonable grounds to believe that the undergarment is a safety hazard, such as grounds to believe that the specific arrestee would use that item to harm themselves or others.

- (e) If a member has reasonable grounds to believe that an arrestee is currently suicidal and is concealing an item that can be used to harm themselves, the member may be justified in conducting a strip search.
  - i. If clothing is removed from an arrestee due to a significant risk of self-harm, the arrestee shall be immediately provided a gown or similar apparel.

#### 4.3 SECURING EVIDENCE INCIDENT TO THE ARREST

- (a) The grounds for the arrest do not, without more, constitute grounds for conducting a strip search.
- (b) Searching officers and supervisors who are asked to authorize a strip search must record in their notes/the strip search form, their grounds for believing that a strip search is necessary in relation to a specific arrestee.

#### 4.4 AUTHORIZATION

- (a) Unless it is impracticable to do so, a searching officer shall obtain written authorization from an Officer-in-Charge before commencing a strip search. It also represents a best practice that the Officer-in-Charge has no specific involvement in the investigation leading to the arrest.
- (b) If an Officer-in-Charge is not available at the police station in a timely way, or one of the searching officers is the current Officer-in-Charge, the searching officer must obtain authorization, absent exigent circumstances, whether in person or on the telephone, from another supervisor or other officer who is superior in rank to the most senior searching officer.
- (c) The Officer-in-Charge or alternative supervisor must document the grounds as articulated to them in their notebook/the strip search form and sign the authorization contained in the strip search form prior to the strip search being commenced. If the Officer-in-Charge or alternative supervisor is not present at the police station, they must subsequently reflect in their notebook/the strip search form when they gave verbal authorization to conduct the strip search.
- (d) If exigent circumstances existed that prevent the searching officer from obtaining prior authorization, whether verbal or in writing, the searching officer shall record in their notebook and in the strip search form what those exigent circumstances were.

#### 4.5 MEMBERS PERMITTED TO CONDUCT THE SEARCH<sup>120</sup>

i. Strip searches shall not be conducted in the presence of any person who is not a member of the Service unless safety considerations dictate that a non-member be present. If safety considerations do so require the presence of a non-member, the searching officer must record in their notebook/the strip search form why this was so and the names of those who attended or participated in the strip search. Subject to 4.5(ii) and (iii), strip searches shall be conducted by members of the same gender as the arrestee.

#### ii. Same Sex Strip Searches

- i. The arrestee should be given the choice of a male, female or split search.
- ii. Absent a choice by the arrestee to the contrary, or exigent circumstances, two police members of the same gender as the person being searched shall conduct or assist in conducting the strip search. If exigent circumstances exist that justify the search being conducted by a person of the opposite gender, the searching officer must record in their notebooks/the strip search form what, if any, exigent circumstances existed.
  - a. In instances involving females who are to be searched, a male officer may be used for safety reasons, as long as the male officer remains outside the room within hearing distance, but positioned so as not to observe the strip search taking place.

#### iii. Transgender or Intersex Strip Searches

i. Where the arrestee identifies as transgender or intersex, or the circumstances otherwise warrant, the arrestee should specifically be given the choice of a male, female or split search.

<sup>&</sup>lt;sup>120</sup> Several different approaches can be taken in procedures as to whether and to what extent searching officers raise the question of choice with every arrestee, or instead, provide the choice to those who identify the issue.

#### 4.6 THE REMOVAL OF CLOTHING

- (a) A strip search must be conducted as quickly and safely as possible and in a way that ensures that the arrestee is not completely naked at any one time.
- (b) The arrestee should first be provided with the opportunity to remove items of clothing themselves.
- (c) The arrestee should be directed to remove one item of clothing at a time, which is then inspected and returned before removing or rearranging the next item of clothing.
- (d) A strip search must involve only a visual inspection of the person's genital and anal areas, without any physical contact or internal inspection.

#### 4.7 FORCE

- (a) Officers must use the minimum amount of force required in conducting a strip search.
- (b) Any force used should be proportionate to the resistance of the arrestee
  - i. Members shall document in their notebook/the strip search form what force, if any, was specifically used and by whom, and why.

#### 4.8 BODY CAVITY SEARCH

(a) If a visual inspection reveals the likely presence of a weapon or evidence in a body cavity, the arrestee must be given the option of removing the object themselves or having the object removed by a trained medical professional with the arrestee's consent. (Refer to Body Cavity Search Procedures).

#### 4.9 YOUNG PERSON

- (a) If a young person is to be strip searched, the officer shall, unless safety concerns require an immediate search:
  - Establish the arrestee's name and identify the name of the arrestee's parent/guardian/agency and make reasonable efforts to provide the person with an opportunity to have an adult person of their choice present, and;

- ii. Allow the adult person to be present during the search, if the arrestee wishes that adult person to be present, and if that the adult person is prepared to comply with reasonable restrictions placed upon them.
- iii. If, for any reason, an adult person of the arrestee's choice is not present for the strip search, the member shall document any attempts made to have such an adult person present in their notebook/the strip search form.

#### 4.10 RELIGION

(a) Arrestees shall be allowed to retain non-dangerous religious symbols. Daggers, swords, kirpans, combs, Indigenous medicine bags and other readily removable religious items that may be lost, damaged or used as weapons may be removed where necessary and stored in accordance with these procedures.

#### (b) Search of Sikhs in Custody

- i. Traditional Sikhs regard certain religious items to be of great importance. These items are known as the five K's:
  - a. Kesh uncut hair- the dastaar (turban) is worn to protect the kesh
  - b. Kanga a wooden comb for grooming the uncut hair
  - c. Kara an iron bracelet
  - d. Kachera a specific style of cotton underwear
  - e. Kirpan a strapped curved sword or dagger
- A Sikh in custody shall be searched in accordance with this section. A strip search may, depending on the circumstances, include the removal of the kirpan and dastaar.
- iii. Where removal of the kirpan and/or dastaar is justified as part of the strip search, the searching officer shall:
  - a. Remove the kirpan if worn
  - b. Have the arrestee remove the dastaar themselves, if practicable, and if consistent with ensuring safety, and
  - c. Search the dastaar and return it to the arrestee without pins etc., used to secure it, or

d. Not return the dastaar to the arrestee if they are suicidal or if continuous monitoring of them is not possible

#### (c) Search of Muslims in Custody

- i. A traditional Muslim female shall be searched in accordance with this procedure.
- ii. Only female members shall be present when there is a search of a female Muslim arrestee, unless there are exigent circumstances, which the searching officer must record in their notebook/the strip search form or the arrestee chooses otherwise.
- iii. The search shall be conducted in a private area.
- iv. Unless impracticable to do so in a timely way, any required removal of a burka, niqab or hijab should be done by the Officer-in-Charge if the Officer-in-Charge is a female; otherwise the Officer-in-Charge shall designate a female member to do so. Such removal may take place if the arrestee is suicidal or the clothing constitutes evidence. In the latter case, the Officer-in-Charge or the designed member shall provide, if practicable, alternative clothing that complies with the arrestee's religious beliefs.

#### 4.11 DISABILITY

- (a) If the searching officer becomes aware of the fact that the arrestee has a disability under the Accessibility for Ontarians with Disabilities Act that affects the arrestee's ability to see, communicate or understand and make informed choices as to how a strip search is conducted, the searching officer shall take steps to accommodate the arrestee's disability, unless exigent circumstances exist, including the need to conduct an immediate strip search for safety reasons. Such accommodation may include, but is not limited to:
  - i. Making reasonable efforts to provide the arrestee with an opportunity to have an adult person of their choice present.
  - ii. Allowing that person to be present during the search if they are prepared to comply with reasonable restrictions placed on them.In any event, the member shall document attempts made to accommodate the arrestee in their notebook/the strip search form.

#### 4.12 DOCUMENTING THE SEARCH

- (a) The searching officer must clearly record their grounds for conducting a strip search and other relevant particulars in their notebook. The search officer shall also complete the strip search form. The searching officer shall retain the original of the completed strip search form and provide a copy of the completed strip search form to the supervisor designated to collect these completed forms.
- (b) The strip search form must be completed by each searching officer in accordance with these procedures and accompanying police service stepby-step appendices.
- (c) Subject to s. 4.4 (iii) and (iv) above, the authorization section of the strip search form must be completed by the searching officer and the authorization signed by the Officer-in-Charge or alternative supervisor prior to the commencement of the strip search. The searching officer must complete the strip search form in full as soon as reasonably practicable.
- (d) There shall be no video recording of the strip search itself.
- (e) Where reasonably practicable to do so, the searching officer shall audio record the strip search, together with any instructions given to the arrestee prior to, and related to the strip search, as well as the arrestee's responses, if any.
- (f) Strip searches should generally be conducted in accordance with step-bystep procedures created by police services that can provide greater detail on how and when strip searches are to be conducted in relation to males, females, transgender individuals or in special circumstances.

### 5.0 Oversight

- (a) Officers-in-Charge or other designated supervisors should conduct random reviews of strip search sheets completed by members at least on a regular basis to ensure searches are conducted and documented properly.
  - a. Officers-in-Charge or other designated supervisors should consider, among other action, re-training or further supervision of a member if a member is exhibiting a misunderstanding of or failure to comply with the law and the existing procedures regarding strip searches.

- (b) Annually, the chief shall obtain strip search data and report to the police service board<sup>121</sup> on the following information:
  - i. Number of strip searches conducted that year
  - ii. Race, if known, of the arrestees
  - iii. Gender, if known, of the arrestees
  - iv. Age of the arrestees
  - v. Number of times force was used
  - vi. Number of times items were found during strip searches
  - vii. An analysis of trends and concerns, if any

#### STRIP SEARCH PROCEDURES - APPENDIX A: Step By Step Procedures for a Male Search

[To be created by each police service]

#### STRIP SEARCH PROCEDURES - APPENDIX B: Step by Step Procedures for a Female Strip Search

[To be created by each police service]

#### STRIP SEARCH PROCEDURES – APPENDIX C: Step By Step Procedures for a Transgender or Intersex Strip Search

[To be created by each police service]

<sup>121</sup> If this template is adopted by the Ontario Provincial Police, then 5.0(ii) must be modified accordingly.

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# APPENDIX B: SAMPLE STRIP SEARCH FORM

#### STRIP SEARCH FORM PRISONER INFORMATION

LAST NAME	FIRST NAME				
GENDER: Male Female	other (details):				
RACE: (select all that apply)					
Black East Asian Indigenous Latino Middle Eastern					
South Asian Southeast Asian White					
DATE OF BIRTH:					
STRIP SEARCH EXPLAINED: yes no					
ARREST DETAILS: Date of arrest:					
SEARCH PREFERENCE: Male Female Split (Details):					
YOUTH SEARCH: Attempt was made to contact guardian: yes no					
Guardian name and contact:					
Guardian response:					
ACCOMMODATION: Does the arrestee have a disability that requires accomodation for the strip search: yes no Results:					
FRISK SEARCH CONDUCTED: yes no Results:					
WAND SEARCH CONDUCTED: yes no Results:					
GROUNDS FOR STRIP SEARCH:					

IN	/ESTIGATING	OFFICER			
Name		Badge			
AUTHORIZATION:		ļ.			
Name	Rank and badge				
I authorize this strip search	Signature				
EXACT LOCATION OF SEARCH -	MUST BE IN A PR	IVATE AREA:			
SEARCH DATE:	start ti	me end time			
ST	RIP SEARCH	DETAILS			
SEARCH CONDUCTED BY:					
Officer Name	Gender	Badge			
ADDITIONAL OFFICERS REQUIR Reason:	ED: yes	no			
DETAILS OF ADDITIONAL OFFIC	ERS INVOLVED IN	STRIP SEARCH:			
Officer Name	Gender	Badge			
Officer Name	Gender	Badge			
AUDIO RECORDED: yes	no If not, why:				
ONE ITEM OF CLOTHING REMOVED AT A TIME: yes no					
VISUAL INSPECTION OF BODY C Notes:	yes no				
OBJECT(S) OBSERVED: Notes:	yes no				
PRISONER INSTRUCTED TO REMOVE OBJECT: yes no					
MEDICAL ASSISTANCE REQUIRE Notes:	ED:	yes no			
OFFICER REQUIRED TO MAKE P Notes:	HYSICAL CONTAC	CT: yes no			
STRIP SEARCH RESULTS: W Details:	/eapon Drugs	Evidence			
ADDITIONAL COMMENTS:					

## APPENDIX C: LIST OF JUDICIAL STRIP SEARCH CASE REVIEWS

- R. v. Pilon, 2018 ONCA 959
- *R. v. Camargo*, 2018 ONCJ 739
- R. v. Daley-Hyatt, 2018 ONCJ 708
- *R. v. Burke-Whittaker*, 2018 ONSC 2976
- R. v. Uhuangho, 2018 ONCJ 599
- R. v. Harrison, 2018 ONCJ 365
- R. v. Beckford-Johnson, 2018 ONSC 2766
- R. v. Bruce, 2018 ONCJ 135
- R. v. Boekdrukker, 2018 ONSC 266
- *R. v. Abdelrahim*, 2018 O.J. No. 3709
- R. v. Gayle, 2018 O.J. No. 5044
- R. v. Grant, 2018 O.J. No. 6334

- R. v. MacPherson, 2017 ONCJ 615
- R. v. Judson, 2017 ONCJ 439

*R. v. Gonzales*, 2017 ONCA 543 On appeal from *R. v. Gonzales*, 2013 ONSC 1244

- R. v. McEwen, 2017 ONSC 6055
- R. v. Perinpanathan, 2017 ONCJ 36
- R. v. Desrosiers, 2017 ONCJ 80
- R. v. Odesho, 2016 ONSC 5640
- R. v. Bookal, 2016 ONSC 2941
- R. v. Graham, 2016 ONCJ 698
- *R. v. Im*, 2016 ONCJ 383
- *R. v. McGuffie*, 2016 ONCA 365 Appealing *R. v. McGuffie*, 2013 ONSC 2097

R. v. Klotz, 2017 ONCJ 543

*R. v. Jackman*, 2016 ONCA 121 Appealing *R. v. Jackman*, 2012 ONSC 3557

*R. v. Clarke*, 2016 ONSC 1510

*R. v. Proulx*, 2016 ONCJ 352

*R. v. Dunwell*, 2016 ONCJ 133

*R. v. Balak*, 2016 ONCJ 44

*R. v. Palmer*, 2016 ONSC 153

R. v D'Andrade, 2016 ONCJ 12

*R. v. McKanick*, 2015 ONSC 2128

*R. v. Casserly*, 2015 ONCJ 760

*R. v. Shearer*, 2015 ONSC 983

*R. v. Evong*, 2014 ONCJ 745

*R. v. Robb*, 2014 ONCJ 514

*R. v. Magaya*, 2014 ONCJ 434

*R. v. Muller*, 2014 ONCA 780 On appeal from *R. v. Muller*, 2011 ONSC 4892

R. v. Mammadov, 2014 ONCA 328

*R. v. Rodriguez*, 2014 ONSC 1466

- R. v. Simone Foster, 2014 ONSC 7116
- R. v. Madray, 2013 ONSC 5364
- *R. v. Melo*, 2013 ONSC 4338
- R. v. Lee, 2013 ONSC 1000
- *R. v. Darteh*, 2013 ONSC 233
- R. v. M. (S.), 2013 ONCJ 219
- R. v. Hendrickson, 2013 ONCJ 729
- *R. v. McKay*, 2013 ONCJ 298
- R. v. Pun, 2012 ONSC 5305
- R. v. Ebanks, 2012 ONSC 5002
- R. v. Nguyen, 2012 ONCJ 624
- R. v. A. (Z)., 2012 ONCJ 541
- R. v. Carrion-Munoz, 2012 ONCJ 539
- *R. v. Manuel*, 2012 ONCJ 392
- *R. v. McGee*, 2012 ONCJ 63
- *R. v. Ali*, 2011 ONSC 424
- R. v. Bouchard, 2011 ONCJ 610
- *R. v. McPhail*, 2011 ONCJ 315

*R. v. Bonds*, 2010 ONCJ 561 R. v. Muthuthamby, 2010 ONCJ 435 *R. v. Smith*, 2010 ONCJ 137 *R. v. Crawford*, 2009 38512 ONSC R. v. Gaeshingtsong, 2009 O.J. No. 6444 R. v. Chowdhury, 2009 ONCJ 478 Affirmed in *R. v. Chowdhury*, 2011 O.J. No. 2171 (SCJ) *R. v. Almada*, 2009 O.J. No. 6504 *R. v. Mesh*, 2009 O.J. No. 6194 R. v. Filli, 2008 ONCA 649 Affirming *R. v. Filli*, 2007 5281 *R. v. Samuels*, 2008 ONCJ 85 *R. v. Jutras*, 2007 22659 (ONSC) *R. v. N.M.*, 2007 31570 (ONSC) *R. v. Wright*, 2007 ONCJ 493 *R. v. Depaepe*, 2007 O.J. No. 3925 R. v. Casimir, 2006 2896 (ONCA) Reversing R. v. Casimir, 2004 8613

R. v. Avarino, 2006 ONCJ 222

R. v. Login, 2006 ONCJ 51

R. v. Sandhu, 2005 51465 (ON SC)

*R. v. Sandhu*, 2005 51464 (ON SC)

*R. v. F.N.*, 2005 ONCJ 412

*R. v. Ferguson*, 2005 1060 (ON SC)

R. v. Grenke, 2004 ONCJ 121

R. v. C. (N.), 2004 ONCJ 99

*R. v. Thomas*, 2004 8097 (ONSC) Affirmed in *R. v. Thomas*, 2005 3849 (ONCA)

R. v. Jackson, 2004 O.J. No. 4168

R. v. A.B., 2003 35574 (ON SC)

R. v. Clarke, 2003 64244 (ONSC)

R. v. Padda, 2003 52405 (ONCJ)

R. v. S.F., 2003 O.J. No. 92 (C.J.)

*R. v. Agostinelli*, 2002 O.J. No. 5008 (C.J.)

R. v. Wilson, 2006 ONCJ 434



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