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# Illegal police strip searches a ‘regular occurrence’

By Peter Small, AdvocateDaily.com Contributor



The use of strip searches raises tough issues for the justice system as it struggles to weigh human dignity against investigative necessity, says Toronto criminal lawyer [Jordana Goldlist](#).

“There’s this difficult need to balance out the rights of an individual with the rights of others, and the safety and protection of the public,” Goldlist, principal of [JHG Criminal Law](#), tells [AdvocateDaily.com](#).

“It’s such a gross invasion of someone’s privacy, and yet so often when someone’s being arrested for drugs or weapons, it yields evidence.”

The issue has hit our prisons, which are battling an epidemic of drugs, like the potentially lethal fentanyl, secreted in inmates’ bodies, she says.

“The question is, how far can you go in ensuring that a person is not carrying drugs?” Goldlist says.

A [report](#) by Gerry McNeilly, director of Ontario’s Office of the Independent Police Review, says strip searches by law enforcement officers have become commonplace and often unnecessary or even illegal.

Goldlist agrees. “Police now take it as being a normal occurrence in the process of arresting someone,” she says.

She recently helped a client gain acquittal in a drug case in which two police officers approached him while he was standing in a Toronto housing complex. They patted him down, and one officer reached into his underwear in full view of passersby, Goldlist says.

They found a bag of heroin, but it was excluded from evidence after Goldlist argued the strip search infringed on her client’s rights against unreasonable search and seizure under s. 8 of the Charter.

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“There’s absolutely no reason to think that if you’re taking someone into the police station that in every situation you need to rearrange or remove their clothing — and that’s the definition of a strip search,” Goldlist says.

According to a landmark 2001 Supreme Court [decision](#), 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 there. Furthermore, the court ruled, when carried out in the field, strip searches should be conducted in a manner that interferes as little as possible with the person’s privacy and dignity.

The McNeilly report identifies 89 court [cases](#) between 2002 and 2018 in which police or the Canada Border Services Agency performed a strip search in violation of the defendants’ s. 8 Charter rights.

Goldlist says it should be noted that the report only identified cases that made it to court in which officers found evidence.

“We have absolutely no concept of how often it happens when nothing’s located,” she says.

“I imagine the numbers are startling because my clients tell me it is a regular occurrence for them in some neighbourhoods in this city for police to stop and detain, and frisk and search, and say, ‘Oh, you’ve got nothing on you. OK, go on your way,’” Goldlist adds.

Just as with carding — the controversial random police checks that have been stopped in Toronto — there is no apparent reason or recourse for the intrusion, she says.

“What does that do to the individual being searched?” Goldlist asks. “Imagine you’re on your way home from a community centre after playing basketball and the next thing you know you’ve got a cop searching around in your underwear trying to see if you’ve got drugs on you.”

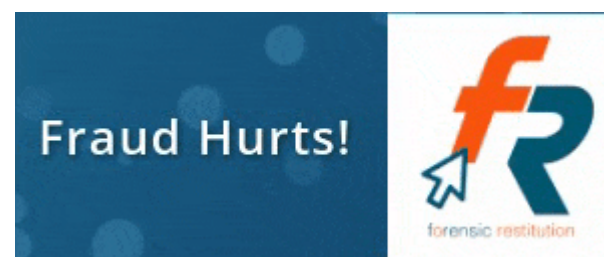
It’s no wonder some communities are hostile to police, she adds.

In his report, McNeilly found that, in many cases, the definition of what constitutes a strip search is poorly understood by police and that procedures around the practice vary widely.

Goldlist says she’s constantly amazed by the disconnect between what the courts say is proper police conduct and how police officers execute their duties.

“Police should be given clearer instructions on the very limited types of situations in which strip searches are actually warranted,” Goldlist says.

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