

# SUMMARY OF ONTARIO JURISPRUDENCE INVOLVING STRIP SEARCHES POST *R. v. GOLDEN*

Supplemental to:  
**Breaking the *Golden* Rule: A Review of Police  
Strip Searches in Ontario**



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*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.

As part of the OIPRD's systemic review of police strip searches in Ontario, the review team examined reported criminal decisions in Ontario rendered after the *Golden* decision in which the court found strip searches were performed in violation of the defendants' section 8 charter rights. The systemic review identified 89 such cases between 2002 and December 31, 2018. "Reported" cases are those that have been published by one of the legal reporting services. Not all judicial decisions are reported.

This document contains summaries of cases involving strip searches in which the courts found charter violations. The summaries include case names, brief facts and the court's reasons for finding charter violations.

To assist the public in reading the summaries, the text of sections 7 to 10 and section 24 of the Canadian Charter of Rights and Freedoms is set out below:

**7.** Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

**8.** Everyone has the right to be secure against unreasonable search or seizure.

**9.** Everyone has the right not to be arbitrarily detained or imprisoned.

**10.** Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed of that right; and

(c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

**24. (1)** Anyone whose rights or freedoms, as guaranteed by this charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

**(2)** Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

An unjustified strip search or a strip search not properly conducted would constitute a violation of an individual's right to be secure against unreasonable search or seizure (section 8 charter violation).

Section 24 of the charter gives the judge the authority to order remedies. Subsection 24(1) could allow sentence reductions or staying the proceedings (stopping further prosecution). Subsection 24(2) could allow exclusion of evidence.

## CASE SUMMARIES

*R. v. Pilon*, 2018 ONCA 959 (CanLII)

Greater Sudbury Police Service

Police obtained a Controlled Drugs and Substances Act warrant for a motel room, where they arrested three individuals including P. Officers handcuffed P with his hands behind his back. They repeatedly observed P trying to place his hands in the front and back of his shorts.

A sergeant searched P incident to arrest. P was wearing two pairs of athletic shorts. In the inner one he had cash tucked in the pocket. The sergeant continued the search by looking inside the second pair of shorts. P was not wearing underwear and the sergeant observed the top of P's buttocks and an elastic band attached to P's penis.

P denied having anything in his shorts. Police observed P continue to reach inside his shorts. Officers expressed safety concerns for themselves and for P. The sergeant authorized officers to take P into the motel bathroom. There, the sergeant, using surgical gloves, pulled the waistband of P's shorts away from his body and removed objects attached to P's penis. The sergeant did not touch P's genitals. He recovered a pill bottle containing fentanyl patches and a ball of electric tape with crack cocaine.

The trial judge accepted that the first strip search was accidental because the sergeant did not know that P was not wearing underwear. The trial judge found the second strip search was justified. Both strip searches were conducted reasonably. P was convicted at trial.

### Reasons for Charter Violation

On appeal, the court said that the finding by the trial judge that the first strip search was "accidental" was an error in law, because the pulling back of the shorts to observe P's undergarments constituted a strip search. Further, the preservation of evidence was not an exigent circumstance to justify the field search. This first strip search violated P's section 8 charter rights.

The second field strip search was not justified by exigent circumstances. P was in a confined space, handcuffed and surrounded by police officers. If he was able to dispose of the evidence, the police would have been able to retrieve it.

The Court of Appeal did not exclude the evidence. The court noted that the only error the police made was in conducting the search in the field. Had the searches been conducted in the same manner at the police station, there would have been no section 8 charter violation. ■

*R. v. Camargo*, 2018 ONCJ 739 (CanLII)

Peel Regional Police

C was arrested for impaired driving and operation over 80. The officer observed C being unresponsive at first, unsteady on his feet, having difficulty walking down the driveway to meet the police and smelling of alcohol.

C was taken to the station for breath tests and was strip searched. C was first asked to remove his top and was bare-chested. The strip search was done in a private room and C pulled his shorts down to his knees to expose his underwear and was required to turn around.

Crown counsel conceded the strip search was a violation of section 8 of the charter because there was no justification for the strip search.

### **Reasons for Charter Violation**

The trial judge found that requiring C to remove his undershirt and be bare-chested amounted to a strip search. The judge also found a violation of C's right to counsel. The judge excluded the breath sample results and readings but not the breath room video. The operation over 80 charge was dismissed. The trial judge found a stay of the charges was not warranted. C was found guilty of impaired driving based upon the officer's observations of C. ■

***R. v. Daley-Hyatt*, 2018 ONCJ 708 (CanLII)**

Durham Regional Police Service

Police stopped a car whose registered owner's licence was suspended. D-H was the driver. Officers smelled burnt marijuana and arrested D-H and his two female passengers for possession of marijuana.

An officer conducted a pat down search and found two cell phones, \$1000 and a round bulge, two to three inches in diameter, near the front pocket area of D-H's pants. The officer then conducted a field strip search. A plastic bag was recovered with substances believed to be cocaine and heroin. D-H was again strip searched at the station and another bag was found. D-H was charged with possession for the purposes of trafficking, administering noxious substance and assault to resist arrest.

**Reasons for Charter Violation**

The initial arrest was unlawful. There was also a violation of D-H's right to counsel. The field strip search, while it may have been justified, was not conducted reasonably. The officer did not inform D-H of the search and the search was conducted in a public area (behind an office building). The officer did not consider less intrusive options, such as looking for a washroom inside the building or directing D-H to lay prone across the rear seat of the cruiser while the officer conducted the search. The trial judge excluded the evidence and D-H was acquitted of the charges. ■

***R. v. Burke-Whittaker*, 2018 ONSC 2976**

Peel Regional Police

(Not available on CanLII)

B-W was observed in a hand-to-hand drug transaction. B-W was arrested and searched (a pat down search). No drugs were discovered. B-W was transported to the station and underwent a strip search. The staff sergeant authorized the strip search. The arresting officer and the staff sergeant had conflicting reasons for the strip search.

The strip search was conducted in a private room; video showed the searching officer but not the accused. This was done to have a record of the search. The trial judge found that B-W was not completely naked. There were three officers present, but the third officer was only present for eight to 10 seconds. No evidence was discovered.

### **Reasons for Charter Violation**

The arrest was proper and the pat down search was lawful. However, the strip search was not properly authorized and thus, unlawful. Two sets of reasons were given for the strip search. The arresting officer's grounds included the location of the drug transaction, B-W's interaction with a known drug user, and the hand-to-hand transaction. The staff sergeant stated that he was told that B-W was known for selling drugs and was known for hiding drugs on his body.

There was no evidence to exclude and the trial judge did not stay the charges. The trial judge left open the potential remedy of a sentence reduction if B-W was convicted at trial. ■

***R. v. Uhuangho*, 2018 ONCJ 599 (CanLII)**

Ontario Provincial Police

U was involved in a motor vehicle collision. U was wearing a full-length religious robe. U failed an approved screening demand and was arrested for operation over 80.

The officer wanted U to remove his draw strings but they could not be removed from his pants. Eventually U removed his pants. U remained in boxers for the rest of the time in the detachment and refused to provide a breath sample. The officer testified that U voluntarily removed his pants because he had urinated in his pants. No other officers detected this and U denied this was the case.

### **Reasons for Charter Violation**

The trial judge rejected the officer's evidence about the urine soaked pants. There were no safety concerns in this situation.

The strip search violated section 8 of the charter. It was done in a public area of the station (officers who observed the search were smirking and laughing); there was no evidence it was authorized by a supervising officer; and U was left in his boxers for a long period of time. The officer did not determine on what basis the draw string would pose a danger, given that it was sewn into U's clothing. Further, U's religious views that no one, besides his immediate family, was to see him in a state of undress added to his humiliation. It should have been obvious by U's full-length attire, which the police recognized as a religious robe, that U was dressed in a way that called for sensitivity. At the very least, it required some form of inquiry as to how the clothing could best be rearranged. The judge ordered a stay of the charge. ■

***R. v. Harrison***, 2018 ONCJ 365 (CanLII)

Niagara Regional Police Service

H was arrested based on police surveillance and information from a confidential informant. Officers conducted a pat down search and found no evidence. At the station, H was pat down searched again and then strip searched.

H was strip searched in a hallway with one door that was open to the booking hall. A third officer came into the search for no purpose. The strip search was videotaped and streamed to another part of the station where female officers could have observed. A plastic bag was recovered. The contents were alleged to be cocaine and H was charged with possession for the purpose of trafficking.

The Crown attempted at trial to prove that the contents of the bag was cocaine but there were significant issues with the continuity of the evidence leading to doubt that the samples sent for analysis were what came from the strip search of H.

### **Reasons for Charter Violation**

The trial judge would have acquitted alone on the issue of continuity of the sample sent for analysis. The judge also found the strip search was unlawful. The officers lacked reasonable and probable grounds and carried out the search in an unreasonable manner. The judge found that grounds were present; however, the supervising officer ordered the strip search only on the basis of the charge.

The manner of the search was unreasonable. There was no privacy afforded to H. The search was on camera, both streamed at the time and recorded. This manner of conducting strip searches was a systemic issue. It was a practice that remained in effect two years after the search of H. The trial judge would have excluded the evidence had there not have been an acquittal. ■

***R. v. Beckford-Johnson*, 2018 ONSC 2766 (CanLII)**

Peel Regional Police

The police had information that B-J used scissors in an assault. A sergeant strip searched B-J in the field by having her lift her blouse. There was inadvertent unhooking of her bra in the back and there was the exposure of the top of her breasts and the midriff of her stomach in the presence of two male officers. No scissors or other instrument that could be construed as a weapon was found.

### **Reasons for Charter Violation**

The trial judge found that the search in the field was a strip search. The search was conducted without giving B-J her rights to counsel. This was a violation of B-J's section 8 charter rights.

The failure to caution B-J first or give her the rights to counsel constituted a violation of section 10(b) of the charter. There was also a further violation of B-J's right to counsel in that the police accidentally recorded part of her conversation with duty counsel. The judge did not stay the proceedings. The judge excluded the utterances B-J made at the scene. ■

***R. v. Bruce*, 2018 ONCJ 135 (CanLII)**

Toronto Police Service

B was arrested for operation over 80. Shortly after the arrest, officers found a small amount of marijuana in B's purse.

The arresting officer recommended a pat down search because B had no criminal record, was cooperative, had only a small amount of marijuana at the time of

arrest and was to be handcuffed to a bench. The Officer-in-Charge disagreed and ordered a Level 3 search (a strip search). The Officer-in-Charge gave this order without having all the relevant information – for example, he did not know how much marijuana was found or where it was found. He justified the strip search by saying that drinking and driving indicated poor decision-making which could lead to B choosing to hand out marijuana to other detainees. B was released a few hours after her arrest.

### Reasons for Charter Violation

The Officer-in-Charge had no reasonable grounds to order the strip search. The judge reviewed *R. v. Golden* and highlighted the need for a distinction between searches that are appropriate when a detainee is integrated into a prison population and those circumstances in which a suspect is held on a short-term basis in police cells.

The Officer-in-Charge made little effort to inform himself of B's specific circumstances prior to ordering a strip search. The need to ensure that B did not have more drugs made the decision likely routine. Further, the concern of the Officer-in-Charge that B would pass along marijuana to other detainees was pure speculation, belied by the fact that B would be handcuffed to a bench. Evidence of the breath readings was excluded and the charge was dismissed. ■

***R. v. Boekdrukker*, 2018 ONSC 266 (CanLII)**

Toronto Police Service

B was charged with trafficking cocaine to an undercover officer on two occasions. On the second occasion, B was arrested and a search warrant was executed on B's residence. Cocaine, hash, marijuana, psilocybin (mushrooms) and cash were found.

The search warrant was not shown to B nor was it left at her residence for her review. Once arrested, B's request to speak to a lawyer was not facilitated in a timely manner.

B was to be held for a show cause hearing (a bail hearing). B was strip searched in a vestibule off the parading area. The vestibule had three walls but no door.

One female officer searched her and blocked the entrance. Male officers were present in the parading area but were not in a position to see the strip search.

### Reasons for Charter Violation

The judge made the following findings: it was appropriate to strip search B because she was arrested on drug offences and was going to be placed in a cell with other prisoners; B was treated professionally and courteously; the police officers made good faith efforts to give B her privacy; and only one female officer saw B being strip searched.

The judge highlighted the requirement from *R. v. Golden*: strip searches should be carried out in a private area such that no one other than the individuals engaged in the search can observe the search. In this case, the strip search was unlawful. Evidence was excluded due to multiple charter violations: the strip search was not conducted in a private area; the search warrant was not shown to B or left at her residence; and B was not given timely access to counsel. ■

***R. v. Abdelrahim*, [2018] O.J. No. 3709 (C.J.)**

Toronto Police Service

(Not available on CanLII)

While on patrol police observed three people in a car. Police observed that A was not wearing a seatbelt. They investigated A, and through searching his name on the police database (CPIC), found that he was in breach of his probation condition not to associate with one of the other individuals in the car. A was arrested.

A was transported to 14 Division. He was cooperative. He had a criminal record, including convictions for imitation firearms and trafficking. A sergeant authorized a Level 3 strip search. A gave evidence that he was completely naked at one point but the trial judge rejected that evidence (there was audio of the strip search procedure).

### Reasons for Charter Violation

Defence counsel had made submission that this was racial profiling, but the trial

judge did not find this. The trial judge did find that the strip search was a violation of section 8 as there were no grounds for the search. A stay of the charge was granted. ■

***R. v. Gayle***, [2018] O.J. No. 5044 (C.J.)

Toronto Police Service

(Not available on CanLII)

G was arrested for assault (spitting on someone), uttering threat to cause death to that person and assault with intent to resist arrest. G resisted arrest and was pepper sprayed, after which he became compliant. EMS transported G to hospital. He was eventually medically cleared and transported to 11 Division.

Transporting officers recommended a Level 2 search. A sergeant ordered a Level 3 search. The sergeant testified that G was verbally combative. G had no criminal record, had been cooperative and had been asking questions about when he would be released.

### **Reasons for Charter Violation**

The trial judge found the strip search was not ordered for a justifiable reason but to punish G for his behaviour (not submitting to police immediately and what the sergeant considered to be G's less than respectful demeanour to him). A stay of the charges was granted. ■

***R. v. Grant***, [2018] O.J. No. 6334 (C.J.)

Toronto Police Service

(Not available on CanLII)

Police observed a male in the passenger seat of a car cutting what may have been marijuana. Police approached the car and G came out of a convenience store and went into the driver seat of the car. G had packages of Backwoods

cigars and officers testified they were used as rolling papers for marijuana. Police identified themselves, asked for the windows to be rolled down and smelled unburnt marijuana and saw loose marijuana and rolling paper on the passenger's lap. G was asked to step out of the vehicle and was immediately arrested. The passenger was not charged and released unconditionally.

G was searched twice incident to arrest and marijuana and crack cocaine were found. G was also wanted on a warrant for another offence. G was taken to 41 Division. He was cooperative, polite and not aggressive. The booking sergeant authorized a Level 3 strip search because G was in possession of drugs.

### **Reasons for Charter Violation**

The trial judge found charter violations, including that G was unlawfully arrested and G's right to counsel was violated.

The trial judge found that the strip search was a violation of section 8. G was polite, cooperative, non-aggressive and charged only with possession (not trafficking). Nothing signalled the need for the strip search other than it was being done as part of the usual routine.

Evidence of the drugs was excluded. The trial judge also found that the actions of the officers "at best can be classified as unprofessional and bad behaviour and I find appear more likely to have been a case of racial profiling, which exacerbates the seriousness of the breaches." ■

*R. v. Klotz*, 2017 ONCJ 543 (CanLII)

Peel Regional Police

K was stopped as part of the RIDE program. K was briefly detained in a police cruiser to conduct the roadside screening. K failed the roadside screening and was arrested for operation over 80.

At the police station, K expressed her desire to speak to her counsel of choice. However, she was unable to contact her mother who would have provided her with the lawyer's contact information. The arresting officer informed K that duty counsel was her only option.

K testified that she was strip searched by a female officer. K was asked to lift her shirt up, grab the underwire of her bra, and move it up and down to show that nothing was concealed. In the process, her breasts were exposed to the female officer. The officer denied conducting a strip search.

### **Reasons for Charter Violation**

The trial judge found three charter breaches: Section 9 – K was arbitrarily detained inside the officer’s cruiser; Section 10(b) – K’s right to counsel was breached when the police did not allow her to obtain contact information for another lawyer of her choosing; and Section 8 – the strip search of K was not reasonable.

The officer did not have an independent recollection of the search and had no notes relating to the search. K’s strip search was done in contravention of the police service’s rules on conducting strip searches and was done contrary to established law. Given the charter breaches, the judge excluded the evidence of the breath tests. ■

***R. v. MacPherson*, 2017 ONCJ 615 (CanLII)**

Toronto Police Service

M was stopped in a car and investigated following reports of erratic driving. Officers saw M concealing something they believed might be a weapon.

M’s pants were lower than his boxer shorts. Officers pulled back M’s boxer shorts and retrieved a bag of crack cocaine from the tailbone area. This was done in the field and not at the station. The officers did not believe that their actions constituted a strip search.

### **Reasons for Charter Violation**

The trial judge looked to the definition of a strip search adopted in *R. v. Golden* and found that a strip search had occurred. Pulling back M’s boxer shorts allowed his buttocks to be exposed. A pat down search would have been sufficient to ensure that M did not have any weapons on his person.

There were no exigent or urgent circumstances to justify searching M in the field. It was unlikely that anything would have happened to the drugs inside M's clothing, before they reached the police station. Therefore, a section 8 charter violation was found and the evidence of the drugs was excluded. ■

***R. v. Judson*, 2017 ONCJ 439 (CanLII)** Quinte West Ontario Provincial Police

J was arrested for impaired driving and operation over 80. After a roadside pat down search and a more thorough pat down at the police station, J was asked to remove her bra. The officer framed the removal of the bra as a request rather than a strip search. The officer testified that it was her practice to ask all female inmates to remove their underwire bras. There was also evidence that requesting the removal of bras was done on a routine basis at the police station.

The Crown conceded that the police had no reasonable and probable grounds to have J remove her bra.

### **Reasons for Charter Violation**

In line with *R. v. Lee* (2013 ONSC 1000 (CanLII)), the removal of the underwire bra was found to be a strip search. The particular circumstances of the case did not justify the strip search: J was charged with impaired driving; J was only spending a few hours in police cells; the pat down search failed to reveal that the bra was damaged such that the under wiring was exposed or easily removed; J made no threats to harm herself or others; J was not violent or aggressive; and the police had no information to suggest that J had a history of mental health problems.

A stay of both charges was granted since this was a routine request done despite the clear language in *R. v. Golden* that strip searches could not be a matter of routine policy. ■

***R. v. Gonzales*, 2017 ONCA 543 (CanLII)**

York Regional Police

(On appeal from *R. v. Gonzales*, 2013 ONSC 1244)

G was stopped by police while in a neighbourhood where there had been multiple break-ins. While speaking to G, the officer smelled marijuana. G was arrested for possession of marijuana.

There were two searches of the van. First it was searched incident to arrest. The police searched a large cardboard box and found packaged marijuana. Second, it was searched after a search warrant was obtained. During this search, 252 pounds of packaged marijuana and \$105,000 was found.

The police obtained a second search warrant for a residence connected to the van. There, marijuana, money and a firearm were seized. G was taken to the police station and strip searched.

The trial judge found a breach of G's section 10(b) right to counsel. However, the trial judge did not exclude the evidence. G was sentenced to five years in prison.

### **Reasons for Charter Violation**

The Court of Appeal found that there was no lawful basis for conducting the traffic stop of G. The stop was not for a legitimate Highway Traffic Act purpose. There was no reasonable suspicion for connecting G to the break-ins. As such, G's section 9 charter rights, to be free from arbitrary detention, was violated.

The Court of Appeal also found a breach of G's section 8 charter rights when he was unlawfully strip searched. Mere possibility of finding evidence is not enough to justify the strip search. At the time of the strip search, the police had only found a box with packaged marijuana, which was not able to be secreted. As such, there was no reasonable and probable grounds for the strip search. The evidence should have been excluded at trial. The convictions were set aside and verdicts of acquittal were substituted. ■

**R. v. McEwan**, 2017 ONSC 6055

Durham Regional Police Service

(Not available on CanLII)

M was arrested for trafficking offences, based on information received from a confidential informant. While handcuffed in the police car, M was seen fidgeting with his pants.

M was strip searched at the police station. There was a period of time (approximately 15 minutes) during which M was completely naked. While naked, M was made to defecate on a paper towel and to clean it up. Crack cocaine was found during the search.

### **Reasons for Charter Violation**

The trial judge found the arrest was unlawful. There was no evidence the information from the confidential informant was compelling, that the confidential informant was credible or that the information was corroborated by the police. The officers only had reasonable suspicion; they did not have reasonable and probable grounds for the arrest.

Even if the arrest was lawful, the strip search was unlawful. The only ground provided to justify the search was the fact that M was fidgeting with his pants. This was not enough for a strip search.

The strip search was not conducted reasonably. There was a chance that officers not involved in the search could see M naked. M was also completely undressed and left naked for an excessive period of time. There was no reason for M to have defecated while fully naked. It was inexcusable that M was left entirely naked while he cleaned up the feces in front of two fully clothed officers.

It was particularly troubling that officers had poor recollection of the unreasonable aspects of the search (length of time spent completely naked) and that officers had not received training on strip searches. The evidence was excluded. ■

***R. v. Perinpanathan*, 2017 ONCJ 36 (CanLII)**

Toronto Police Service

P was arrested for operation over 80 and impaired driving. Officers found 1.5 grams of marijuana in P's car. At the police station P was belligerent, angry, unresponsive, interruptive and unfocused. He also made irrational outbursts (told supervisor he loved her). His mood also changed quickly (he said he wished he were dead).

The supervising officer authorized a Level 3 search (a strip search). The officer's grounds were as follows: P was angry and aggressive, P admitted to smoking marijuana and the officer was concerned that P had a weapon and more drugs.

**Reasons for Charter Violation**

The strip search was neither necessary nor reasonable. There was no information to suggest that P was involved in drug trafficking or assaultive behaviour. The notion he had secreted drugs or a weapon on his person was pure speculation.

In excluding the evidence, the judge found that the supervising officer acted in good faith. However, the supervising officer did not have objectively reasonable and probable grounds to support her decision to authorize a strip search. ■

***R. v. Desrosiers*, 2017 ONCJ 80 (CanLII)**

Peel Regional Police

D was arrested for possession of marijuana. D was a passenger in a van where a "known to police" crack cocaine user entered. Police were suspicious that a drug deal was taking place and stopped the van. Police claimed to smell marijuana and see green leaves and/or flakes.

The arresting officer told a female officer to take D back to the police station for a strip search. The arresting officer knew that the known crack cocaine user had been in the van; that no crack cocaine was found during the search of the van; and believed that either the driver or D would have been in possession of crack cocaine.

Once at the police station, D admitted to having drugs in her underpants. D was taken to the search room where the door was left open. D removed drugs from her underpants and provided it to the female officer.

### Reasons for Charter Violation

The trial judge found the “traffic stop” was a fishing expedition that was based on a hunch. Officers observed a known crack cocaine user enter the van and became suspicious. No one had reported any crime, nor had the officers seen anything that would give rise to a reasonable, objectively supported belief that a crime was being committed. D’s section 9 rights were breached when she was arbitrarily detained.

There was no evidence that the Officer-in-Charge of the station authorized the strip search. Rather, the strip search was done based on a general policy that all persons arrested for a drug offence were to be strip searched. Reflecting on *R. v. Golden*, the judge noted that the mere possibility that an individual may be concealing evidence or weapons is not sufficient to justify a strip search. In this case, the officers were acting on hunches.

In excluding the evidence, the judge also highlighted the fact that the door to the search room was left open. While the female officer testified that no male officer would have entered the room, the judge recognized that D would not have known this. ■

***R. v. Odesho*, 2016 ONSC 5640 (CanLII)**

York Regional Police

The Crown alleged O shot two men; one died and the other could identify O. A witness saw O retrieve the gun from the waistband of his pants. O turned himself into the police three days later. Officers made O remove all of his clothing and seized his underwear. O was completely naked for one minute and 15 seconds. The search was videotaped in its entirety and O was photographed during each stage of undress.

The Crown submitted this was not a strip search because the police were only interested in seizing the clothing. The officers were not attempting to inspect

O's body or undergarments. The underwear was tested for Gun Shot Residue (GSR) and one particle was found.

### **Reasons for Charter Violation**

The trial judge found that O was subjected to a strip search. In analyzing the justification for the strip search, the judge distinguished the case of *R. v. Backhouse* (2005 CanLII 4937 (ON CA)). In *Backhouse*, the accused was arrested less than two and a half hours after the murder. The accused's clothing was seized quickly and no photographs were taken. The Court of Appeal in *Backhouse* found that the seizure of the clothing did not constitute a strip search. Turning to the case at hand, the judge found that the seizure of O's clothing occurred three days after the murder, the seizure took approximately nine minutes, and it involved photographs of O's body in various states of undress. There was no evidence that the clothing O was wearing when he turned himself in was the same clothing he was wearing days earlier.

The strip search was not conducted reasonably: the strip search was not authorized by a supervising officer; O was completely naked for one minute and 15 seconds; and the entire search was videotaped. Evidence of the GSR particle on O's underwear was excluded. ■

***R. v. Bookal***, 2016 ONSC 2941 (CanLII)

Toronto Police Service

B was arrested for possession of cocaine for the purposes of trafficking. During the execution of a search warrant on B's condominium, an ounce of cocaine was found. In the storage unit at the condominium, officers found cash and a large quantity of cocaine. After his arrest, B was strip searched at the police station.

### **Reasons for Charter Violation**

The trial judge found that there were grounds to strip search B, in that B was lodged in a busy holding cell and then taken to a busy court house.

Nevertheless, the judge found a section 8 charter violation. While a sergeant authorized the strip search, the sergeant had inadequate notes and no

independent memory of why the search was authorized. Likewise, the officers who conducted the search did not have notes or independent memory of why they requested the strip search. The officers who conducted the search did not have notes of how the search was conducted.

The blatant lack of record keeping of the reasons for and the manner in which the strip search was conducted, was a violation of B's section 8 charter rights. All things considered, the judge did not exclude the evidence, as the strip search was conducted by officers who were not part of the investigative team that found the evidence in question. Further, the strip search was conducted well after the evidence was obtained and the investigation was complete. ■

***R. v. Graham***, 2016 ONCJ 698 (CanLII)

Durham Regional Police Service

G was arrested on drug trafficking charges. A pat down search uncovered \$750 and a digital scale. No drugs were found.

G was strip searched at the police station. The grounds for the search were G's history of trafficking; the digital scale found with him; and behaviours indicative of drug trafficking were observed during surveillance.

The sergeant who authorized the search, testified that another ground for the search was that G exhibited "subject behaviour," which included moving around during transport. No other officer testified to this particular ground at trial.

G was strip searched in a room by the booking hall. The door to the room was open for much of the strip search (female officers were walking by and had a view of the strip search). Fifteen grams of crack cocaine was found in his socks, and 8.7 grams of crack was found in G's rectum. Police had to take G to the ground when he resisted and were able to extract bags from his rectum by pulling the bags out.

### Reasons for Charter Violation

The trial judge found there were reasonable and probable grounds for the strip search; however, the manner of the strip search was unreasonable. The judge based his conclusion on:

1. The “subject behaviour” – the record was unclear if G was actually observed moving around during transport.
2. The search did not adequately protect G’s privacy – the door remained open for 18 minutes.
3. Female officers were in the vicinity and had the opportunity to see G.
4. There was no evidence that G was given the option of removing the bags from his rectum.
5. While the judge accepted that the officer did not place his hands into G’s rectum, the officer did use force to pull the bags out.

Evidence was excluded. ■

***R. v. Im***, 2016 ONCJ 383 (CanLII)

Toronto Police Service

Officers from Toronto Police Service 32 Division arrested I for impaired driving. Officers conducted a Level 2 search (a non-strip search) but had I remove his pants, exposing his undergarments. No prior authorization was sought before asking I to remove his pants. This amounted to a strip search as defined by *R. v. Golden* and qualified as a Level 3 search under TPS policy.

Officer F categorized the search as a Level 2 search in his notebook and did not mention the pants removal until cross-examination. Officer F testified this was routine and while he had read the Toronto Police policy manual, he had been taught that Level 2 searches included having individuals remove their pants. Officer F also testified that he had performed at least 100 Level 2 searches this way. A senior officer who was present during the search of I did not take any notes of the search and did not stop Officer F or tell him that what he was doing was wrong.

Officer H, a senior officer responsible for training junior officers, testified to being unsure as to whether the removal of pants constituted a strip search.

Crown counsel conceded that a section 8 charter violation had occurred because there were no reasonable and probable grounds for the strip search.

### **Reasons for Charter Violation**

The trial judge found this was one of the clearest of cases where a stay of proceedings was warranted. Despite clear guidance from the Supreme Court, the case law since *Golden* has revealed a number of police officers in Ontario engaging in unconstitutional strip searches. Further, a number of the reported cases involved unconstitutional strip searches by officers from Toronto's 32 Division.

In *R. v. Melo* (2013 ONSC 4338 (CanLII)), a stay of proceedings was not granted because the evidence showed that 32 Division officers were gaining a better understanding of the law regarding strip searches. In contrast, the judge found that the strip search of I was not an isolated incident. The evidence highlighted systemic issues at 32 Division. The officers did not understand the limits on their authority to conduct strip searches. Based on Officer F's testimony of conducting at least 100 strip searches that were wrongly categorized as Level 2 searches, the judge noted that no officer had apparently stopped Officer F or told him that what he was doing was wrong. In effect, Officer F's actions have escaped constitutional scrutiny.

In sum, the judge found that the law was clear. *Golden* defined a strip search as including a situation where the removal of clothing leaves someone's undergarments exposed. The TPS policy states the same thing. As a result, there should be no contention, confusion or uncertainty. ■

***R. v. McGuffie*, 2016 ONCA 365 (CanLII)**

Ottawa Police Service

(Appealing *R. v. McGuffie*, 2013 ONSC 2097 (CanLII))

Ottawa Police Service was called to a bar at 2 a.m., when security personnel advised them that a group of men had been seen passing a handgun around. M was identified by the doorman of the bar as part of this group. M quickly walked away and an officer followed him and questioned him.

M was detained, handcuffed and briefly searched (nothing found). M was then detained in a police cruiser while the officer continued with the investigation. M was not under arrest at this time. After 30 minutes, the officer returned and conducted another more thorough “safety search.” The officer discovered a hard package that turned out to be cocaine, money and marijuana. M was arrested and the officer testified that he then “would have” advised M of his right to counsel. M asked to speak to counsel and the officer did nothing in response to this request.

The officer was authorized to conduct a strip search because M could still have the handgun as well as more drugs (by this time the handgun from the bar had been located). M resisted. Constable G restrained M by standing on his ankles. The judge found that this was gratuitous and clearly meant to cause pain. The strip search uncovered cocaine sewn into the waist of M’s underwear. After this was discovered, M became more cooperative and produced a package of cocaine from his buttocks. The strip search was continued in an open room in the presence of three other police officers who were not involved in the search. M was then allowed to call a lawyer.

**Reasons for Charter Violation**

The trial judge and the Court of Appeal found a number of charter violations. The initial detention was a valid investigative detention and the pat down was reasonable and authorized. The detention following was arbitrary. If no reasonable and probable grounds for arrest existed, then M should have been released. The second search was unreasonable as it followed an unlawful detention.

M's right to counsel was violated when he was not informed of this right when he was detained and when he had expressed a desire to speak to counsel, which was not given.

The strip search was held to be unreasonable. While there were grounds allowing the strip search, the manner that it was conducted was unreasonable. The intentional infliction of pain and the circumstances (open room, other officers present) increased the humiliation and degrading aspects of the search. The Court of Appeal found that the evidence should have been excluded. ■

***R. v. Jackman***, 2016 ONCA 121 (CanLII)

Canadian Border Services Agency

(Appealing *R. v. Jackman*, 2012 ONSC 3557 (CanLII))

At the Toronto Pearson International Airport, J was picked out by a sniffer dog (trained to smell guns and drugs) for secondary screening. Four kilograms of cocaine was found sewn into the lining of the suitcase. J was strip searched by Border Services officers and subsequently, by the RCMP.

### **Reasons for Charter Violation**

The Application Judge found that the strip search by the Border Services officer was a charter violation because it was done as a matter of routine policy. The Application Judge stated that the border crossing context is not so unique that all of the teaching of *Golden* can be ignored. The appropriate balance is to apply the requirements of *Golden* on the lesser standard of reasonable suspicion. On appeal, the first search conducted by border security was not addressed because it was not one of the issues raised.

The Court of Appeal agreed with the Application Judge that the second search done by the RCMP did not violate J's section 8 rights. The officers' reasons for the strip search included:

1. When the RCMP assume custody of a prisoner who has been searched by another agency, the RCMP need to be satisfied that the prisoner does not have any evidence, weapons or means of escape.

2. The RCMP knew that J was considered to be suicidal and had made statements that she was thinking of hurting herself.
3. The RCMP officer was aware that J had been in different locations while in custody at customs and was concerned that J may have picked something up that could be used to harm herself, to open the handcuffs or as a weapon.
4. J would be going to a detention facility. Therefore, it was important to ensure that J did not have anything that would pose a danger in a facility where other inmates were present.

The Court of Appeal accepted these reasons and found that grounds existed to conduct the second strip search. ■

*R. v. Clarke*, 2016 ONSC 1510 (CanLII)

Canadian Border Services Agency

C visited Jamaica where he ingested 52 pellets of cocaine before travelling from Jamaica to Toronto Pearson International Airport. A Border Services officer referred C to secondary screening and initiated an interrogation. During this interrogation, the Border Services officer repeatedly accused C of ingesting drugs. C denied ingesting drugs. When C asked to speak to a lawyer, the Border Services officer placed him under arrest. After speaking to duty counsel, C admitted to ingesting drugs. C was strip searched and underwent a bed pan vigil. After two days in the hospital, he passed 52 pellets of cocaine (worth \$15,000 to \$26,000).

The Crown conceded that the Border Services officer had insufficient grounds to arrest C.

### **Reasons for Charter Violation**

The judge found the actions of the Border Services officer were egregious. His testimony was filled with errors, evasions, and excuses. C's request for a lawyer triggered the officer's decision to arrest C. The officer continued to interrogate C before C had a chance to exercise his right to counsel.

The judge, in excluding the evidence, noted that while a bed pan vigil was less invasive than a body cavity search, it was nonetheless an embarrassing and intrusive process. While there is a lesser expectation of privacy at an airport, the judge noted that the airport is not a charter-free zone. C was subjected to a prolonged and highly intrusive search, without justification. ■

***R. v. Proulx***, 2016 ONCJ 352 (CanLII)

Quinte West OPP (and Toronto Police Service)

The Toronto Police Service drug unit was conducting surveillance on S as part of a drug investigation. Police observed S driving out of a parking lot with P's vehicle following. The police did not see any contact or interaction between the S and P.

Quinte West OPP conducted a traffic stop of P at the direction of Toronto police officers. P was arrested for possession of cocaine for the purposes of trafficking.

P was strip searched and not allowed to speak to counsel for 9½ hours because there was an ongoing investigation. A search of the car recovered two one-kilogram bricks of cocaine.

### **Reasons for Charter Violation**

The Toronto Police officer who directed the arrest of P did not objectively have the grounds to arrest. At no point did the surveillance team witness an interaction between S and P. Since the arrest was unlawful, the strip search was unlawful.

Even if the arrest was lawful, the strip search would have been unlawful. There was no reasonable and probable grounds to believe that P may be concealing weapons or evidence. The judge got the impression that the search of P was done as routine. P had already undergone a pat down search which did not reveal any weapons. The strip search was neither necessary nor reasonable.

The judge found the conduct of the police to be very serious. In addition to the unlawful strip search, P was not able to exercise his rights to counsel for 9½ hours. As such, the evidence was excluded. ■

***R. v. Dunwell*, 2016 ONCJ 133 (CanLII)**

Toronto Police Service

D was asleep and slumped over the wheel of her car. A member of the public called the police. The defence admitted that D was in care and control of a vehicle, with a blood alcohol reading of 160 mg of alcohol in 100 ml of blood.

D was taken to the police station and searched prior to the breath tests. There was some conflicting evidence about whether D was required to remove entirely her one-piece pantsuit in order to remove her belly ring. D testified that it was removed. The two female police officers said that while it was not removed entirely, D's breast and back would have been exposed when she pulled down her pantsuit to remove the belly ring. The door into the room was ajar and D's back was to the door. D was given a white jump suit. Neither of the police officers considered this a strip search.

**Reasons for Charter Violation**

The trial judge found that a strip search had occurred. Whether D was required to remove her entire pantsuit, or as the officers testified, only her breast and back were exposed, both would constitute a strip search.

There were no reasonable and probable grounds justifying this strip search. There were no reasons to believe the belly ring posed any danger and no evidence was led that any case-specific reasoning was applied in this case. A policy to strip search women with jewellery without exception contravened the charter.

The judge found it concerning that vague concerns of police safety trumped the accused's dignity, and found this was one of the clearest of cases that required a stay of proceedings. ■

***R. v. Balak*, 2016 ONCJ 44 (CanLII)**

Toronto Police Service

B was evicted from his apartment. The landlord placed his belongings outside and a passer-by took a box of household items. Inside the box, the passer-by found

two restricted firearms and called police. The investigation focused on B, and police found information that B was legally required to report his new address.

Police attended B's new apartment. They asked him if he had reported his new address and he said he had not. They asked him about the restricted firearms and he said that he had purchased them over 30 years ago and had completely forgotten about them. Police officers testified that they believed him.

B was arrested and transported to the police station. At the station, the detectives recommended a strip search and the duty sergeant agreed (citing "other safety concerns" on the strip search order form). At trial, the duty sergeant could not remember why he ordered the strip search. The strip search was conducted in a room that had the door completely open. The duty sergeant testified that this was because the room was at the end of the hallway and the door remained open to be able to record any statements made. A constable, who assisted in the strip search, testified that it was unusual to keep the door open and that the room was not at the end of a hallway. One of the detectives wandered by and looked into the room during the strip search.

### **Reasons for Charter Violation**

The trial judge held that B's right to counsel was violated. He had been detained when first approached by the police at his apartment and should have been given his rights to counsel.

There were no reasonable and probable grounds to justify the strip search. The police ordered the strip search because of the nature of the charges (possession of weapons) and safety concerns. The duty sergeant had not been informed of the mitigating circumstances of his arrest (guns not in his possession, guns purchased 30 years earlier and B had forgotten about them, B was cooperative). The judge also noted that B was released from the station on an undertaking.

The strip search was also not conducted according to the guidelines set out in *R. v. Golden*. The door was open and the search was not conducted in private. Evidence was excluded. ■

***R. v. Palmer*, 2016 ONSC 153 (CanLII)**

Peel Regional Police

A Peel Regional police officer received information from a confidential informant that a “Sean” would be at an address trafficking drugs in his rectum. “Sean” was the nickname for P. Police attended and saw P leave the address. They stopped and arrested him. A pat down search revealed a fold-out knife.

At the police station, P was strip searched. The strip search was conducted with the door open. When done, P left the room with only his underwear on and carrying his pants. No drugs were found in the strip search.

**Reasons for Charter Violation**

The trial judge found that the arrest of P was lawful: the tip from the confidential informant was specific; P was known to police for drug dealing; police conducted surveillance and observed P leaving the specified address.

The judge held that the strip search was justified. There were reasonable and probable grounds justifying the search (there were grounds to believe that drugs were in P’s rectum and a knife was found hidden at P’s waist). The manner of the strip search was not reasonable because it was not done in private and P left the room in only his underwear. This violation did not justify the exclusion of the evidence. ■

***R. v D’Andrade*, 2016 ONCJ 12 (CanLII)**

Peel Regional Police

D was observed driving erratically. Two male police officers stopped D to assess her sobriety. The police formed reasonable suspicion and made a roadside demand.

A female officer attended with the roadside screening device. D failed the test and was arrested for operation over 80. The female police officer conducted a pat down search at the side of the road. D was wearing a tight, form fitting sweater. The female officer unzipped the sweater without warning. D was only wearing a see through bra and her breasts were exposed to the male police officers.

Although the female officer attempted to zip up the sweater right away, the zipper got caught on material and it took several moments to zip it up.

### Reasons for Charter Violation

The trial judge held that the definition of a strip search included removal or re-arrangement of clothing to inspect undergarments. Whatever articles of clothing D might have been wearing under the tight sweater were not for public eyes. Once the female officer unzipped D's sweater, it did not matter that the officer assumed that D was wearing a shirt underneath. In unzipping the sweater, the officer rearranged D's clothing so as to permit a visual inspection of her undergarments. The officer's actions constituted a strip search.

There were no reasonable and probable grounds justifying the strip search. There was no evidence that D had a criminal record or outstanding charges. Furthermore, this was conducted at the road side without justification as to why it could not wait until arrival at the police station. A pat down search was sufficient to ensure no weapons. No evidence of operation over 80 could be uncovered by this strip search. The female police officer had a policy of unzipping all zip up sweaters; this was contrary to *R. v. Golden*. The evidence of the breath tests were excluded. ■

***R. v. McKanick*, 2015 ONSC 2128 (CanLII)**

Barrie Police Service

M was a passenger in a car that police had observed and suspected was involved in drug trafficking. Barrie police conducted a take-down and arrested M and the driver at the roadside. The driver resisted arrest and was grounded by police. An officer conducted a brief search of the driver for weapons and drugs by lifting the band of the driver's baggy pants and underwear for a couple of seconds. The officer did not pull down the driver's pants or underwear.

A second officer observed M putting her hands into her pants and then throwing her cell phone underneath the car. A female officer conducted a pat down search of M and pulled the waistband of M's pants out about two inches and looked down.

At the police station, a staff sergeant authorized the strip search of M. She was strip searched by a lone female officer in a private room (there was a small window covered with paper) with a police officer standing guard outside the room. M was left completely naked for approximately five minutes. A bag of cocaine was found in her vagina.

### **Reasons for Charter Violation**

The trial judge found there were reasonable and probable grounds justifying the strip search of M at the police station. Most aspects of the strip search were conducted reasonably, except for the fact that M was left completely naked for five minutes, without exigent circumstances. As such, there was a violation of M's section 8 charter rights.

This was not the clearest of cases warranting a stay. Further, the judge did not exclude the evidence. The charter infringing conduct was not serious. It was not done in bad faith, and the officer adhered to requirements in *R. v. Golden*, except for leaving M naked for five minutes. ■

***R. v. Casserly*, 2015 ONCJ 760**

Toronto Police Service

(Not available on CanLII)

C was arrested for impaired driving. C was subjected to an unwarranted strip search that was not authorized by a supervising officer. This charter breach was conceded by the Crown.

### **Reasons for Charter Violation**

The trial judge found a section 8 charter violation for the illegal strip search. The judge had concerns regarding the officers' credibility. The arresting officer and the officer who conducted the search had ambiguous and vague answers to whether a strip search was done. Despite the violation, a stay was not warranted. C was acquitted on the evidence and a charter remedy was not required. ■

***R. v. Shearer*, 2015 ONSC 983 (CanLII)**

Durham Regional Police Service

S was arrested for first degree murder. In the booking area at the police station, S was directed to remove his shorts in front of a female officer. S was then taken to an adjoining room where he was directed to remove his underwear. The door to his room was partially open.

**Reasons for Charter Violation**

This was an application by the Crown to determine the voluntariness of S's statement to the police. While the defence did not bring a charter application, the judge found that the *R. v. Golden* rules were not followed. There was no authorization for the strip search. A female officer was present when S removed his shorts. S was also naked in an adjoining room with no privacy. Had other officers passed through the area, they would have been able to see S naked.

Other circumstances in the case along with the strip search amounted to oppressive circumstances and the Crown could not prove that S's statement was voluntary. ■

***R. v. Evong*, 2014 ONCJ 745**

Peel Regional Police

(Not available on CanLII)

E was charged with refusing to comply with a demand to provide breath samples. As a result of an unwritten policy, E was directed to remove her bra before entering the holding cells.

**Reasons for Charter Violation**

The trial judge found a section 8 charter violation, because no individualized assessment was done. This was contrary to *R. v. Golden*. Officers did not advert to whether there were grounds to believe E had a weapon, had contraband, or posed a risk to herself or others.

The remedy of a stay was not appropriate in these circumstances. The judge imposed an absolute discharge. The seriousness of the removal of E's bra was

compounded by the length of time that the unwritten policy was in place. The supervising officer testified that the unwritten policy regarding the removal of bras had existed throughout her 18 years at Peel Regional Police. This is in the face of the *Golden* decision which made routine searches unlawful. ■

***R. v. Robb*, 2014 ONCJ 514 (CanLII)**

Durham Regional Police Service

R was arrested for operation over 80 and was taken to police station for breath tests. R was required to remove her underwire bra based on policy. R was cooperative and polite with police.

#### **Reasons for Charter Violation**

The trial judge found there were no grounds for the removal of the underwire bra and that this was done based on a policy. The reason for the policy was that underwire bras have wires that could be used as a ligature, a weapon or as an escape tool. The judge was bound by the decision in *R. v. Lee* (2013 ONSC 1000 (CanLII)) and concluded that the strip search was conducted without the requisite grounds.

The section 8 charter violation did not warrant a stay of proceedings or an exclusion of the evidence of the breath tests. While the charter breach was serious, the removal of the bra occurred before the decision of *Lee* was released, characterizing such removals as a strip search. ■

***R. v. Magaya*, 2014 ONCJ 434 (CanLII)**

Hamilton Wentworth Detention Centre

M was an inmate at Hamilton Wentworth Detention Centre. A correctional officer suspected M had contraband or weapon. M was taken to an interview room to be strip searched. This room was in an area away from other prisoners, but it was still visible to them. The door to the room was left open during the search. M was left completely naked while the correctional officer searched his clothing. Two grams of marijuana was found.

### Reasons for Charter Violation

The trial judge found that the correctional officer did not have any grounds for the search. He did not have reasonable suspicion or reasonable grounds. Rather, the strip search was based on a hunch. Moreover, contrary to established case law and the Ministry of Correctional Services Act and its regulations, the correctional officer did not obtain the authorization of the superintendent. The strip search was a section 8 charter violation and the evidence was excluded. ■

*R. v. Muller*, 2014 ONCA 780 (CanLII)

Windsor Police Service

(On appeal from *R. v. Muller*, 2011 ONSC 4892)

Two confidential informants advised police that “Biggie” was selling drugs out of a specific apartment. The police executed a search warrant of the apartment but found no drugs. Four people were found in the apartment; none matched the description of “Biggie.”

As the search warrant was being executed, officers conducting surveillance outside of the building, observed M (who matched the description of “Biggie”) exiting the apartment building. The police observed M drop a digital scale with residue resembling crack cocaine. M was arrested for possession of crack cocaine for the purpose of trafficking.

Upon arrest, M was frisk searched and three cell phones, some cash and keys were seized. M was then strip searched at the police station and was completely naked for a period of time. M was told to “bend over and spread his butt cheeks.” When M bent over, the police noticed a plastic bag concealed between M’s buttocks. An officer removed the bag from between M’s buttocks. Inside that bag was another bag that contained crack cocaine, cocaine and a dozen oxycodone tablets. The strip search of M was videotaped.

The trial judge found the arrest and strip search of M to be lawful. The evidence was not excluded.

### Reasons for Charter Violation

The Court of Appeal concluded that the arrest of M and the frisk search were lawful. While the officers had the authority to conduct a strip search, the manner in which the search was conducted constituted a breach of M's section 8 charter rights.

The Court of Appeal concluded that this strip search was not conducted reasonably. The reasons included: the strip search was conducted in a room where the door was left open; the search was video recorded with no protocols in place about who had access to the video; no supervisory authority was sought for the strip search; when M was completely naked and bent over, the police retrieved the bag from between his buttocks without first asking him if he wanted to remove it himself; and there were no records of the search other than the video. The Court of Appeal set aside the convictions and ordered a new trial. ■

***R. v. Mammadov*, 2014 ONCA 328 (CanLII)**

Toronto Police Service

M was arrested for impaired driving. M provided two breath samples, then was strip searched and lodged in the cells until he was sober. The strip search did not uncover any evidence. The arresting officer testified that he strip searched M because he was concerned that M had something that could be used to self-harm. However, the Officer-in-Charge testified that once the decision is made to hold any individual in the cells, that person would be strip searched as a matter of routine.

At trial, the Crown conceded a violation of M's section 8 charter right because he was subjected to a routine strip search. The trial judge did not find that this was a case that required a stay of proceedings. The summary conviction appeal judge also found no error.

### Reasons for Charter Violation

The Court of Appeal denied leave to appeal. The Court of Appeal had to determine whether the trial judge properly applied *R. v. Golden*. While the trial judge did not specifically cite the test in *Golden*, the record shows that the trial judge's reasoning complied with the principles in *Golden*.

The strip search was carried out as per Golden guidelines: in private, M was never completely naked and the officer took steps to minimize the traumatic effects of a strip search. ■

***R. v. Rodriguez*, 2014 ONSC 1466 (CanLII)** Canadian Border Services Agency

At Toronto Pearson International Airport, R was taken to a secondary screening area. There, Border Services Officers found heroin in R's wallet. R was arrested for smuggling heroin. R was strip searched by the Border Services officer and additional heroin was found in R's luggage.

R was then transferred into the custody of the RCMP. The RCMP conducted a second strip search.

### **Reasons for Charter Violation**

The trial judge adopted the reasoning in *R. v. Jackman* (2012 ONSC 3557 (CanLII)), holding that in the border context there must be individualized reasonable grounds to suspect. The judge in *Jackman* took into account the border context but held that *R. v. Golden* could not be ignored; a strip search as a matter of routine could not be allowed.

The strip search by the Border Services officers was a section 8 charter violation because there was no evidence that they had turned their mind to the grounds for conducting the search.

The RCMP's strip search was not a violation of R's charter rights. The RCMP officer did not conduct an automatic strip search; he had the required grounds to search R.

Evidence was not excluded, and a stay of proceedings was not granted. ■

***R. v. Simone Foster***, 2014 ONSC 7116  
(CanLII)

Canadian Border Services Agency

F was arrested for importing cocaine into Canada. At the Toronto Pearson International Airport, security officers discovered 1.2 kilograms of cocaine hidden in F's bra. Border security conducted a strip search.

The RCMP officer who took custody of F did not know that F had been strip searched. F was strip searched a second time. One female officer conducted the strip search in a cell with the door open to the hallway and the search was video recorded. Officers testified that the door was open for security purposes. The video recording was done for the purpose of creating a record of the search. No notes were taken of the search and no authorization was sought from a supervisor. The male officers testified that they did not witness the search. If they had seen the search on the monitor, they testified that they would have switched the monitor to a different camera feed.

Officers did not know the policy regarding strip searches and testified that strip searches were routine in drug importation cases.

The case provides no details of the strip search by border security, and there is no discussion by the trial judge of whether this search was a violation.

### **Reasons for Charter Violation**

Regarding the search by the RCMP, the trial judge relied on *R. v. Muller* (2014 ONCA 780 (CanLII)) and *R. v. Ebanks* (2012 ONSC 5002 (CanLII)).

The judge found there was no justification for the strip search by the RCMP. Suspicion of drugs is not enough. The strip search was done as a matter of routine, and supervision and training were lacking for the officers. Moreover, the judge indicated that the officers should have ascertained whether a strip search was done by border security. Like *Ebanks*, there were no reasonable grounds for a second search because F was in custody from the time of the first search and would not have had an opportunity to obtain contraband.

The manner of the strip search by the RCMP was also unreasonable. Like the facts in *Muller*, there was no supervisory authorization, the door was left open, F was half naked facing a hallway accessible by other persons, the search was videotaped and there was a lack of notes. Evidence was excluded. ■

***R. v. Madray*, 2013 ONSC 5364 (CanLII)**

Toronto Police Service

M brought an application to sit at counsel table during his trial. Because this application was granted, M was subjected to strip searches after every break and at the end of the day.

There was conflicting evidence given by officers who stated that all prisoners in these circumstances would be strip searched. The supervisor who ordered the searches stated that she made this decision based on policy, which adhered to *R. v. Golden*.

### **Reasons for Charter Violation**

The trial judge found no reasonable grounds for the strip searches. The supervisor's stated reasons for ordering the search were not specific to M. Rather they were generic (it was a domestic assault trial and M had a criminal record) and could be applied to any accused person sitting at counsel table. The judge noted that legitimate security concerns are usually raised where there is a real issue of controlling an accused person sitting at counsel table. The judge found that M was in custody for a year and no evidence of an inability to control M was raised.

A stay of proceedings would have been granted unless the strip searches stopped. The trial continued because the Toronto Police Service advised that the strip searches would stop if M sat at the counsel table behind his lawyer. ■

**R. v. Melo**, 2013 ONSC 4338 (CanLII)

Toronto Police Service

M was charged with impaired driving and operation over 80. M was brought to 32 Division where, after giving breath samples, M was strip searched because he would be held until he sobered up. The strip search was conducted in a respectful manner.

The Officer-in-Charge testified that she would order strip searches routinely in these circumstances. The Officer-in-Charge would err on the side of caution if someone was to be held in the cells. The Officer-in-Charge stated that it was a central lock up and contraband was easily passed between prisoners. M was the only person in custody that day and had been searched (pat down) when arrested. No evidence or weapons were found during this pat down search.

### **Reasons for Charter Violation**

At trial, the Crown conceded a section 8 charter violation for the strip search. There was also a violation of section 10(b) as M was Portuguese and his rights to counsel was not provided in Portuguese. The breath sample readings were excluded and M was acquitted of operation over 80. M was convicted of impaired driving on other evidence.

The trial judge indicated that the law has been clear since *R. v. Flintoff* (1998 CanLII 632 (ON CA)). In *Flintoff*, the Court of Appeal found that a strip search conducted on the basis of general policy was unreasonable. Further, *Flintoff* stated that the routine strip search of a suspected impaired driver was “outrageous.”

The trial judge and the summary conviction appeal judge did not stay the proceedings because of the violations. In her refusal to grant the stay, the trial judge highlighted that 32 Division police officers were gaining a better understanding of the law regarding strip searches. Therefore, the need to send a strong judicial message to the police was not needed. The trial judge imposed a \$1 fine and minimum 12 month driving prohibition as a remedy for the charter violations. ■

***R. v. Lee*, 2013 ONSC 1000 (CanLII)**

York Regional Police

L was arrested for impaired driving. At the police station, L was given a pat down search. When the search revealed that L was wearing an underwire bra, she was ordered to remove it. L took off her shirt, sweater, and bra leaving her breasts exposed for a period of time. The police officer testified that she did not expect L to take everything off but to remove her bra while still wearing her shirt.

The booking sergeant testified that it was an unwritten policy for women wearing underwire bras to have their bras removed and searched. Items could be hidden and there was a concern that the wire could be removed and used as a weapon.

The trial judge did not find that this was a strip search.

**Reasons for Charter Violation**

The summary conviction appeal judge found that this was a strip search and that there were no reasonable and probable grounds for the search. The trial judge failed to consider the two-part definition of a strip search as outlined by *R. v. Golden*: the removal or rearrangement of some or all of the clothing so as to permit a visual inspection of the person's private areas or undergarments. The purpose of the unwritten policy was to remove underwire bras for the inspection. The removal of the bra fell within the definition of a strip search.

The policy of searching all women with underwire bras was not a case-by-case specific evaluation and would not be allowed by *Golden*. The conviction was quashed and a new trial was ordered. ■

***R. v. Darteh*, 2013 ONSC 233 (CanLII)**

Toronto Police Service

D was riding his bicycle when he was stopped by three Toronto Police officers. D alleged that during the confrontation an officer asked him to lift up his shirt. This officer then pulled down D's pants and underwear to his ankles.

The officers denied D's account. D was stopped for a Highway Traffic Act offence, refused to identify himself and was aggressive. After D was handcuffed and placed in cruiser, officers found a bag of cocaine in the cruiser.

### Reasons for Charter Violation

The trial judge found credibility issues with the officers and accepted D's version of events. The strip search and traffic stop were egregious violations of D's charter rights. The traffic stop was conducted using the Highway Traffic Act as a ruse. The officer who conducted the stop had a prior interaction with D and wanted to gather intelligence related to drugs and possible gang connections. The cocaine alleged to have been found in the cruiser was excluded. ■

*R. v. M. (S.)*, 2013 ONCJ 219 (CanLII)

Toronto Police Service

M, a young person, was arrested for a firearms offence (a revolver found in his backpack at school). M was strip searched at the police station.

Two officers testified that M was completely naked while another officer testified that the Toronto Police Service policy was adhered to, meaning that as each item of clothing was removed and searched, it was returned to M. The police were polite and non-threatening and examined his scrotum and rectum.

### Reasons for Charter Violation

The trial judge found there were reasonable and probable grounds for the strip search; however, the search was conducted in an unreasonable manner. In other strip search cases, exigent circumstances were required for the person searched to be left completely naked. In the case of M, there were no exigent circumstances to justify him being left naked.

A stay of proceedings was appropriate. The judge found that a review of the case law makes it clear that there was a decade-long history of Toronto Police officers conducting unconstitutional strip searches. These strip searches occurred despite having policies in place which adopt the principles in *R. v. Golden*. Leaving M, a 12 ½-year-old naked violated his section 8 charter rights. The judge found that without the draconian remedy of a stay, misconduct by the police was likely to continue. ■

***R. v. Hendrickson*, 2013 ONCJ 729 (CanLII)** Durham Regional Police Service

H was charged with operation over 80 and possession of marijuana. The police found 2.5 grams of marijuana in the vehicle.

There were conflicting accounts of the search conducted at the police station. H's account, which the trial judge accepted, was that "while standing before the booking sergeant his belt, shoes and glasses were removed and his pockets emptied, after which, he was taken to a private room and told to remove his shirts and drop his pants." While "standing in his boxer shorts, an officer used his hand to check H's underwear waist band and touched his thigh." H was "embarrassed by the intrusiveness of the search and the fact that the door to the room was slightly open."

The officer testified that in the past he had misunderstood the service's policy and had conducted routine strip searches. However, he did not do so in this instance. The trial judge did not accept the officer's testimony as the time that H was in the room being searched (as determined by video) was over a minute and did not correspond to the type of search the officer testified to.

**Reasons for Charter Violation**

There were no reasonable and probable grounds to justify the strip search. The strip search was therefore conducted contrary to *R. v. Golden* and to the Durham Regional Police Service's policy.

The trial judge ordered a stay of proceedings on the operation over 80 charge. It was reasonable to conclude that what had happened to H was not an isolated event. The evidence in the case showed that the officer who searched H routinely strip searched detainees without justification. The officer did so because he did not understand the relevant police policy. When this was brought to the officer's attention, he remained confused or ignored the policy. H did not challenge the conviction for the possession of marijuana charge. ■

***R. v. McKay*, 2013 ONCJ 298 (CanLII)**

Toronto Police Service

M was arrested for assault, assault with weapon, dangerous driving, impaired driving and failing to provide breath sample. This was in relation to a domestic dispute. The police stopped M and her boyfriend. The boyfriend informed police that he was on his way to the airport. M, who was a 61-year-old retired school teacher with health concerns, was dressed in a nightgown when police arrested her.

M was taken to 53 Division in Toronto and the decision was made to hold her for a show cause hearing (bail hearing). This decision led to her being strip searched. A short while after the strip search, officers changed their mind and released M from the police station. The charges of assault, assault with weapon and dangerous driving were subsequently withdrawn.

**Reasons for Charter Violation**

The decision to hold M for a show cause hearing was unlawful. The officer who made this decision could not reasonably have had any safety concerns for the boyfriend. The boyfriend was interviewed and told police that he was on his way out of the country.

While the strip search was conducted properly, it was not justified in law. There was a routine policy at 53 Division to strip search prisoners detained for a show cause hearing. While the majority of cases show safety reasons will require a strip search, in this instance, the search of M was not justified. This was especially so because M was only strip searched because of a broad policy.

By itself, the routine strip search of everyone held for a show cause hearing may not have resulted in a stay of proceedings. However, the cavalier attitude of the officers and the snap decision to hold M for a show cause hearing without further investigation, led to an unlawful strip search. This warranted a stay of proceedings. ■

***R. v. Pun*, 2012 ONSC 5305 (CanLII)**

York Regional Police

P was arrested for sexual assault. At the police station, P was strip searched and a penile swab was taken. P's clothing was also seized. The Officer-in-Charge was not trained in conducting sexual assault investigations. The Officer-in-Charge did not articulate his grounds for the seizure or the strip search.

The Crown argued that a strip search did not occur. According to the Crown, the search was not done to inspect P's penis, but to obtain possible DNA evidence.

**Reasons for Charter Violation**

The trial judge concluded that a strip search occurred. The judge found that P was subjected to a degrading experience involving the exposure of his private parts to the police. The definition of a strip search cannot be narrowed in the manner that the Crown suggested.

The judge found the strip search to be unlawful. While the Officer-in-Charge did not act in bad faith, he did not articulate his grounds for the search of P. Nor did he make a note of his grounds. Evidence from the penile swab was excluded. ■

***R. v. Ebanks*, 2012 ONSC 5002 (CanLII)**

Royal Canadian Mounted Police

E was arrested for smuggling 406 grams of cocaine through Pearson Airport (by ingesting pellets and inserting some into her vagina). Section 98 of the Customs Act permits an officer to search a suspect whom he/she suspects on reasonable grounds is carrying contraband.

E was strip searched by border security and also subjected to a bed pan vigil to retrieve the drugs that she had ingested. E was under the constant supervision of two officers during the vigil. E was then strip searched again by the RCMP after they took custody of her. Because there were no available female RCMP officers, a border security officer conducted the search on behalf of the RCMP.

The defence did not dispute the lawfulness of the first strip search.

### Reasons for Charter Violation

The trial judge held that the first strip search by border security was legal. Citing the case of *R v Monney* (1999 CanLII 678 SCC), the judge recognized that strip searches of travellers carried out under the Customs Act do not violate section 8 of the charter. Border crossings occur in a unique context and people do not expect to be able to cross international borders free from scrutiny. However, the judge noted that there was no case law that justified second searches in the importing context.

The second strip search by the RCMP was done as a matter of routine and policy when a prisoner was transferred to them by another agency. It did not matter that the prisoner had already been strip searched. It did not matter that E had no opportunity to gain access to any contraband while in custody. There were no reasonable and probable grounds for this strip search. As such, the second strip search was a violation of section 8 of the charter.

The charter violation was raised during sentencing as a mitigating factor. The judge held that the proper sentence was 2.5 years and reduced it to two years due to police misconduct. ■

***R. v. Nguyen*, 2012 ONCJ 624 (CanLII)**

Toronto Police Service

Toronto Police officers were conducting surveillance of an after-hours club. The officers observed N leaving the club and he seemed impaired. When N started his car, the officers approached and arrested him for impaired driving. Police searched him at the scene and found a vial of ketamine. N was transported to Traffic Services Division where a urine sample was taken and a drug recognition expert test was performed. At Traffic Services Division, N was subjected to a Level 2 search.

N was then transported to 14 Division. At 14 Division, he was placed into the cells for a short period of time before being released. The duty sergeant testified that a Level 3 search (strip search) was required because N was arrested for drugs. The search would be conducted for the purpose of uncovering drugs and for safety.

There were no prisoners at the time in the 14 Division cells. The strip search took two minutes and conformed to Toronto Police Service's policy on Level 3 searches.

### **Reasons for Charter Violation**

The trial judge found that the duty sergeant's reasons for ordering the strip search were post-facto rationalizations after he was called to testify and had consulted the service's policy manual. The decision to strip search N was unreasonable. There was no consideration given to the fact that N had been searched in the field and at Traffic Services Division. Moreover, there was no one else in the cells with N. This would minimize, if not eliminate, the theoretical risk of contraband being transferred to or from N.

No evidence was seized as a result of the strip search, therefore, the remedy of exclusion of evidence was not available. The judge concluded that it was open to N to ask for the charter violation to be factored into the crafting of an appropriate sentence if he was found guilty. ■

***R. v. A. (Z.)*, 2012 ONCJ 541 (CanLII)**

Toronto Police Service

A was a young person who was arrested for refusing to comply with a breath demand. Once arrested, there was a struggle resulting in A being arrested for assault peace officer. A was subjected to a strip search and was left fully undressed. A did not have a chance to speak to duty counsel or counsel of his choice until after the search and after he was lodged in cells. No notes were kept of the search and it was not clear from the evidence if the supervising officer had authorized the search and for what purpose.

### **Reasons for Charter Violation**

The trial judge found a section 10(b) charter violation when the officers failed to accommodate A's request to speak to a lawyer.

The judge also found the following concerning: the lack of notes; the lack of clarity around who authorized the strip search; and the lack of clarity around the grounds

for the strip search. The strip search was likely due to the routine policy of strip searching an accused being detained for show cause. The judge accepted the reasoning in *R v Samuels* (2008 ONCJ 85 (CanLII), that the nature of the offence (in this case refusing to give a breath sample) was not one which “inherently raises the potential that the accused may have a weapon, evidence connected to the offence, or general contraband upon his person.”

The manner of the search was also unreasonable because it was conducted without regard to A’s youth, his right to speak to counsel, and his right to speak to a parent or other adult. Further A was left fully undressed. The charges against A were stayed. ■

***R. v. Carrion-Munoz*, 2012 ONCJ 539 (CanLII)**

Toronto Police Service

C-M was arrested for impaired driving. He was transported to 41 Division. Based exclusively on the high blood alcohol readings, the staff sergeant decided to hold C-M to allow him time to sober up. C-M was polite and cooperative with police. He asked if he could take a taxi home or have a friend pick him up because he had to work in the morning. He was told he had to wait. C-M was subjected to both a Level 1 and Level 2 search that found nothing.

41 Division cells were full and the staff sergeant unsuccessfully tried to send C-M to another station to avoid having to strip search him. C-M was housed at 41 Division and the staff sergeant testified that he was strip searched because of the “mere chance” that he had a weapon and that because it was a custodial setting he did not require reasonable grounds for the search.

**Reasons for Charter Violation**

The detention of C-M was arbitrary and a violation of section 9 of the charter. While the police could hold someone for safety, the staff sergeant only considered C-M’s blood alcohol levels. No consideration of C-M’s individual case and whether a friend or family member could pick him up. Had C-M been released earlier, there would not have been any reason to strip search him.

Crown conceded the section 8 charter violation in light of the section 9 charter violation. The judge also held that even though he did not have to address the section 8 violation, there was nothing to suggest that C-M had contraband or weapons or would pass anything to other prisoners. A stay of proceedings was not warranted in this case. These violations could factor into sentencing. ■

***R. v. Manuel***, 2012 ONCJ 392 (CanLII)

London Police Service

M was arrested for impaired driving by the London Police Service. M was held for a show cause hearing (bail hearing) because he was from the Northwest Territories (NWT). M was not given his rights to counsel once it was decided that he was to be held for a show cause. M was strip searched at the detention centre because he was entering into the general population of prisoners.

### **Reasons for Charter Violation**

The detention was arbitrary and contrary to section 9 of the charter. Simply being from NWT was not reasonable grounds to hold M for a show cause hearing. The police knew that M had family in London, Ontario, that he had no criminal record and was cooperative.

In this case, M was strip searched upon admission to the jail. The judge recognized that it would be a rare case when a strip search would not be justified on safety and security grounds when an accused was entering the prison population. However, because the detention was arbitrary, the strip search was found to be a violation of section 8 of the charter. A stay of proceedings was granted. ■

***R. v. McGee***, 2012 ONCJ 63 (CanLII)

Toronto Police Service

M was arrested for impaired driving. M had no prior criminal record. M was transported to 32 Division. M was polite and cooperative at the time. M was also showing signs of anxiety. M was subjected to Level 1 and Level 2 searches. Nothing was found.

M was subjected to a Level 3 search (strip search) because he was to be detained while he sobered up. Police officers testified that strip searches were done at 32 Division as a matter of routine if the accused was to be held for a show cause hearing (bail hearing) or just to sober up. M testified that when he was housed in the cells, no other prisoners were beside him.

No notes were taken about the decision to strip search M. The Officer-in-Charge authorized the strip search; however, no notes regarding the authorization, the reasons for the strip search, or the manner of the strip search were made.

### **Reasons for Charter Violation**

The trial judge found no reasonable and probable grounds for the strip search. M was arrested for impaired driving; he had no criminal record; there was no evidence he interacted with other prisoners; and two pat down searches yielded no weapons or drugs. The search was done as a matter of routine. The search was a violation of M's section 8 charter rights.

Of notable concern was the lack of notes. One of the guidelines for conducting a strip search involves maintaining a proper record of the reasons for and manner in which the strip search was conducted. The officer who searched M testified that he had never included in his notes the basis for conducting strip searches. The judge reviewed the "Search Supplementary Form" and noted that this form asks for the authority for the search. While the form provides six options in response, none were checked off in the case of M's strip search.

A stay of proceedings was warranted. The police officers testifying had stated that they had not been apprised of court cases dealing with routine strip searches. The decision to stay proceedings took this into consideration. ■

***R. v. Ali***, 2011 ONSC 424 (CanLII)

Toronto Police Service

A was detained on the side of the road for an investigation into firearms and drug offences. Officers from 14 Division then searched him by pat down search. No firearm was located.

A sergeant attended the scene and then further searched A (while still in investigative detention and not yet arrested). The sergeant pulled A's underwear away from his body and saw a portion of cellophane sticking above A's underwear. The sergeant seized one package of cocaine. The judge found this to be a strip search.

The sergeant then took A to the ground and pulled A's pants three-quarters of the way down his buttocks. The sergeant seized two more packages of cocaine. The judge found this to be a second strip search.

### **Reasons for Charter Violation**

The trial judge found the investigative detention was lawful and the pat down search was justified.

The strip searches at the side of the road were not authorized by the common law power of search incident to an investigative detention. The search was not conducted in a reasonable manner as it was more intrusive than the law allowed.

Even if a strip search was conducted after A's arrest, it would still have been unreasonable: there were no exigent circumstances requiring the search be done in the field. Evidence from the search was excluded. ■

***R. v. Bouchard***, 2011 ONCJ 610 (CanLII)

Kenora OPP

B was arrested for impaired driving. B was taken to the detachment and held in the cells before and after her breath samples. B was rational, polite, cooperative, and did not have a criminal record. Before giving her breath sample B had to surrender her personal belongings including her bra. No explanation was given as to why B had to surrender her bra and the Crown submitted that this was reasonable to ensure her safety in the cell. There was no evidence that the Ontario Provincial Police (OPP) had a policy that reflected the decision in *R. v. Golden*, which would have dictated a case-by-case assessment to determine the necessity of strip searches.

### Reasons for Charter Violation

The trial judge held that the search was intrusive and not justified. It was a violation of B's section 8 charter rights.

While the judge saw the characterization of the removal of the bra as not being a strip search, the judge did highlight that it was still highly intrusive. Because the removal of the bra was done before the first breath sample, the judge held that the breath sample reading would be excluded. The second breath sample was taken longer than practicable and the delay was not explained. B was found not guilty. ■

*R. v. McPhail*, 2011 ONCJ 315 (CanLII)

Peel Regional Police

M was arrested for impaired driving and operation over 80. The log book indicated that M was strip searched. The police testified that they did not routinely strip search people arrested for impaired driving. Other than the log book, there were no additional notes. M was first described at the trial as being compliant and cooperative. Later in the trial, the police described M as being belligerent and arrogant.

Officer M initially denied that a strip search had occurred. Later in his testimony, he stated that he conducted a strip search after finding a cell phone in M's shoes. After a wand search revealed nothing else, Officer A strip searched M. Officer A testified that he had seen on police bulletins that modified cell phones could shoot bullets.

### Reasons for Charter Violation

The trial judge held that the strip search was not justified. There were no reasonable and probable grounds for the search. After the wand search revealed no other hidden items, Officer A proceeded to strip search M without a justifiable reason. Further, no authorization was sought for the search and M was completely naked during the search.

The judge found that the strip search had been done in order to humiliate or intimidate M. The violation of M's section 8 charter rights did not warrant a stay of proceedings. The attempt by the officers at trial to hide the fact that a strip search was done was factored into the decision to exclude the evidence. ■

***R. v. Bonds*, 2010 ONCJ 561 (CanLII)**

Ottawa Police Service

B was observed by police taking a sip from a bottle of beer and then disposing it in the garbage. Two police officers approached her on the street, obtained her name and date of birth and ran a check on her. The officers told B to go home. B questioned the officers about the reason for the stop. After continued questioning of the officers, B was arrested for public intoxication. At the police station, a strip search was performed by a female officer with three male officers present.

Video evidence was reviewed by the trial judge and assisted in the following findings. There was no hint of violence or aggression on the part of B during the transport to the police station. A female special constable was present in the search room. The special constable acted in a very forceful and aggressive manner towards B. When B was not one hundred per cent compliant, the special constable gave B "two extremely violent knee hits in the back," pulled B's hair back and shoved her face forward. It was evident from the camera feed that someone has a hand inside B's pants, around her upper leg or hip area. An officer testified that at this point, B kicked the special constable. B was then grounded. A male sergeant then used a pair of scissors to cut the back of B's shirt and bra. B was left in a cell in a half-naked state for three hours and 15 minutes, having soiled herself as well.

**Reasons for Charter Violation**

The trial judge found B's initial arrest was unlawful and a clear violation of section 9 of the charter. B's treatment at the police station was appalling. Officers had either not been made aware of *R. v. Golden* or were lending a blind eye to it. The judge was appalled by the fact that the strip search was undertaken in the presence of male officers. It was quite evident that none of the officers had received gender training, and that they only give lip service to female dignity and

privacy. There was no reason for the male sergeant to have cut B's shirt and bra off. There was also no reason, apart from vengeance and malice, to have left B half-naked in a cell sitting in her soiled pants.

The judge held that this was an extremely serious breach of B's charter rights. A stay of proceedings was the only fair outcome. ■

***R. v. Muthuthamby*, 2010 ONCJ 435 (CanLII)**

Toronto Police Service

M was arrested for impaired driving and taken to 32 Division. M was polite and cooperative, and none of the officers considered him a threat. M did not have a criminal record. The arresting officer said that there was no basis to believe that M had contraband or weapons. M was subjected to a Level 2 search and nothing was found.

At 32 Division, after the breath test, the Officer-in-Charge of the police station, decided to hold M until he sobered up. The Officer-in-Charge ordered a Level 3 search (strip search) for M. The Officer-in-Charge testified that she was aware of the Toronto Police Service's policy and the requirement to evaluate on a case-by-case basis. She also testified that it was a policy to do a complete search of everyone placed in a cell. The strip search was done in a respectful manner in private and M was not completely naked.

### **Reasons for Charter Violation**

The trial judge held that there were no reasonable and probable grounds for the strip search. M's section 8 charter right was violated.

In relation to strip searches, the Toronto Police Service's policy sets out six risks factors to consider: (1) the details of the arrest; (2) the history of the person; (3) any items located during a Level 1 or 2 search; (4) the demeanor or mental state of the individual; (5) the risks associated with not performing a strip search; and (6) the potential that the person would come into contact with other detainees.

There was no case-by-case analysis as required by *R. v. Golden*. Of the six criteria set out in the policy, only the last one applied. Relying solely on the

potential for M to come into contact with other detainees is akin to the automatic searching of all short-term detainees. The judge found that M was at an extremely low risk for possessing contraband, and at the time of his detention only two other prisoners were being held.

A stay of proceedings was not warranted in this case. The judge held that the remedy would be for M to choose: either a one day conditional sentence or a one dollar fine. ■

*R. v. Smith*, 2010 ONCJ 137 (CanLII)

Toronto Police Service

S was arrested for operation over 80. S was subjected to a pat down search and his wallet seized.

At the police station, S admitted to having cocaine in his wallet (he initially denied having drugs). S also advised officers that he had consumed a small amount of cocaine earlier in the evening. S was charged with possession of cocaine. S was then subjected to a more extensive pat down search which did not yield any drugs.

The staff sergeant ordered a Level 3 search (strip search) in order to confirm that there was no more cocaine on S. While S was not being held with other detained persons, the police were concerned about his safety and the risk that S would consume drugs while in police custody.

There were conflicting accounts of the strip search and the trial judge found S's account to be credible. The door into the room where the strip search occurred was ajar and S was completely naked during the search.

### **Reasons for Charter Violation**

There were no reasonable and probable grounds to justify the strip search. The police did not suspect S to be a drug dealer. They believed that the cocaine found was for personal use. It was not reasonable to conclude that S had more drugs concealed on him. He was already subjected to two searches prior to being strip searched.

The strip search was also conducted unreasonably. Contrary to the Toronto Police Service's policy and *R. v. Golden*, the officer who conducted the strip search did not take notes about how the search was conducted.

Had the charter breach been limited to the strip search without proper grounds, the judge would not have granted a stay of proceedings. The fact that the strip search was also conducted unreasonably made this one of the clearest of cases where a stay of proceedings was appropriate. ■

***R. v. Crawford***, 2009 CanLII 38512 (ONSC)

Peel Regional Police

On the basis of a confidential informant's information, the police set up surveillance of a building, where they observed a vehicle, driven by C, pull into a visitor parking space. The officers approached the vehicle and saw C trying to hide something down his pants in the groin area. The officers could not see what was in C's hand and they testified that the movement occurred very quickly.

C was arrested for possession of cocaine for the purposes of trafficking and a pat down search revealed no contraband. A uniformed officer was directed to conduct a strip search of C at the police station. Before leaving the scene, the uniformed officer conducted a second pat down search. At the police station, another pat down search was done prior to the strip search. 33.1 grams of cocaine was found during the strip search.

### **Reasons for Charter Violation**

The confidential informant's credibility was not strong. Further, the information received was not corroborated by the police. Therefore, the arrest was unlawful.

There were no reasonable and probable grounds for the arrest. The officers were not acting in good faith. They conducted a strip search after several pat down searches revealed nothing to support their belief that C had hidden something in his pants. Therefore, the strip search was not justified. Evidence was excluded. ■

***R. v. Gaeshingtsong***, 2009 CarswellOnt 10092;  
[2009] O.J. No. 6444 (C.J.)

Toronto Police Service

(Not available on CanLII)

G was involved in a bar fight where he used a beer bottle as a weapon. G was arrested and a pat down search was conducted. G was strip searched at the station and no weapons were found. G was not held for bail and had no criminal record.

### **Reasons for Charter Violation**

The trial judge found a section 8 charter violation. There were no grounds for the strip search under *R. v. Golden*, and the search was performed as routine, despite numerous judicial pronouncements and the service's own policy that compelled officers to consider specific risk factors. A stay of proceedings was granted to preserve the integrity of the judicial system. ■

***R. v. Chowdhury***, 2009 ONCJ 478 (CanLII)

Toronto Police Service

(Affirmed in *R. v. Chowdhury*, [2011] O.J. No. 2171 (SCJ))

C was arrested for impaired driving. C was lodged by himself in cells to sober up. C was strip searched (took off his clothes and told to put hands on his knees and bend over). The arresting officer testified that a strip search was routine when someone was being lodged in cells even if by themselves and only for a short period of time.

### **Reasons for Charter Violation**

The trial judge found there were no reasonable and probable grounds for the search because no individualized assessment was done. Instead, it was a routine search. Crown conceded a section 8 charter violation. A stay of proceedings was appropriate. The conduct was serious and had an impact on C's privacy and dignity. ■

**R. v. Almada**, [2009] O.J. No. 6504 (C.J.)

Toronto Police Service

(Not available on CanLII)

Two sisters were arrested for cause disturbance and assault peace officer. They were transported to 52 Division. A Level 3 strip search was authorized at the police station. The sergeant who authorized the strip search could not articulate the reason for the search other than a general concern about the presence of weapons and drugs when individuals are arrested in the entertainment district of Toronto.

**Reasons for Charter Violation**

The trial judge found the Crown had not established any grounds for the strip search and it was a violation of section 8. A stay of the charges was the only appropriate remedy in the circumstances. The ruling applied to both sisters. ■

**R. v. Mesh**, [2009] O.J. No. 6194 (C.J.)

Toronto Police Service

(Not available on CanLII)

M was observed driving erratically by the police. After a short pursuit and further bad driving, M was stopped and arrested. M was behaving irrationally and struggled with police. M's wife attended and assisted, as M only spoke Russian (officers did not speak Russian). M calmed down, a frisk search of M found no weapons or contraband. M was transported to the police station.

A sergeant authorized a Level 3 strip search, but at trial he had no solid recollection of the event. M was being held for a short time due to his intoxication. There was nothing unusual in his manner at the police station.

**Reasons for Charter Violation**

The trial judge found that there were no grounds for the strip search. It was a matter of routine and a violation of section 8. A stay of the charges was the only appropriate remedy. ■

**R. v. Filli**, 2008 ONCA 649 (CanLII)

Toronto Police Service

(Affirming *R. v. Filli*, 2007 CarswellOnt 5281)

F was a passenger in a vehicle stopped by the police. Officers observed a significant amount of crack cocaine in plain view under the passenger seat of the car.

F was subjected to a pat down search and more crack cocaine and ecstasy was found. F was strip searched twice in the field and more crack cocaine was found in his underwear.

**Reasons for Charter Violation**

The strip searches were in violation of F's section 8 charter rights. There were no grounds to justify the search to preserve evidence or for weapons. F was handcuffed to the rear; the officers would have been able to observe any attempts to access drugs while in the back of the police car; and the police station was a 10-minute drive from the scene of the arrest. Evidence from the strip search was excluded. ■

**R. v. Samuels**, 2008 ONCJ 85 (CanLII)

Toronto Police Service

S was arrested for operation over 80. S was subjected to a Level 1 pat down search when arrested and a Level 2 search at the station. S was cooperative, polite, did not have a criminal record and was not violent.

The sergeant who authorized the strip search testified that each prisoner was assessed on a case by case approach. However, when someone was to be detained in the cells regardless of the reason, he would authorize a strip search. Not doing so could put the other detainees and the people in the station at risk.

**Reasons for Charter Violation**

The trial judge found there were no reasonable and probable grounds for the strip search. There were no justifiable safety concerns: S was arrested for operation

over 80, an offence that does not inherently raise the potential that S may have had a weapon, evidence connected to the offence, or general contraband; S was already searched twice; S had no criminal record; S was to be released once sober. The sergeant failed to turn his mind to these factors in making the decision to strip search S. A stay of proceedings was granted. ■

***R. v. Jutras***, 2007 CanLII 22659 (ONSC)

Toronto Police Service

J was convicted of operation over 80. The Ontario Superior Court of Justice allowed his appeal.

J was stopped by a RIDE program and taken to 32 Division in Toronto. J was strip searched once because he was being held for a show cause hearing (bail hearing) and once again when he was transported to Maplehurst Detention Centre.

### **Reasons for Charter Violation**

The summary conviction appeal judge found a violation of J's section 11(b) charter right to be tried within a reasonable time (the matter took 15 months to resolve). On this basis alone, a stay of proceedings was warranted.

The summary conviction appeal judge also found a violation of J's section 10(b) charter right to speak to counsel. J's section 9 charter right to not be arbitrarily detained or imprisoned was breached when the police decided to hold him for a bail hearing. J was a Canadian citizen with ties to Ontario, who was attending university in the United States. There were no reasonable grounds to believe that J would have been a flight risk. J should not have been held for a bail hearing.

The two strip searches were violations of section 8 of the charter because J was arbitrarily detained. The second strip search was problematic because the Crown had no evidence as to why a second one was required. All of the charter violations, taken together, were serious. A stay of proceedings was the only appropriate remedy. ■

**R. v. N.M.**, 2007 CanLII 31570 (ONSC)

Ontario Provincial Police

M was a Toronto Police officer alleged to have assaulted his wife. There were concerns around his stability and access to firearms.

The OPP activated an integrated response involving specialist teams such as the Emergency Response Team and the Tactics and Rescue Unit. The OPP arrested M at his home. The officers strip searched M outside his home in the freezing cold.

**Reasons for Charter Violation**

The trial judge determined that the strip search was unreasonable. During the arrest of M, he was surrounded by highly trained tactical officers. Moreover, the location of the arrest was a nine to 10-minute ride from the OPP detachment. The strip search was not authorized by a supervising officer. In these circumstances, it was entirely unreasonable to conduct a strip search as defined in *R. v. Golden* on M's front lawn. The OPP officers at the time of the trial still did not show an understanding of *Golden*. Evidence was excluded. ■

**R. v. Wright**, 2007 ONCJ 493 (CanLII)

Halton Regional Police Service

W was arrested in a toy store for committing an indecent act in a public place. W was first lodged in a cell at the station and then later strip searched.

**Reasons for Charter Violation**

The trial judge found the initial arrest was unlawful and a section 9 charter violation. Therefore, the strip search was unlawful and a section 8 charter violation.

The strip search was also done well after W was arrested and lodged in the cells. This was not done "incident to arrest." The search was not done for officer safety and could only be classified as a search to obtain evidence. As a result, the police were required to seek judicial authorization (a warrant) to conduct the search. ■

***R. v. Depaepe***, [2007] O.J. No. 3925 (C.J.)

Sarnia Police Service

(Not available on CanLII)

D was stopped as part of a RIDE program and arrested for operation over 80. A search revealed cocaine on D and D was arrested for possession of cocaine as well.

D was transported to the police station and subjected to a strip search. The strip search occurred before the breath tests. A search of D's purse also revealed marijuana and D was charged with possession of marijuana.

**Reasons for Charter Violation**

The trial judge found that the strip search was unlawful and based only on policy and suspicion. The unlawful strip search delayed the breath tests and they were not taken as soon as practicable (a legal requirement) so should not be admitted. The trial judge would have also excluded using the charter. D was still convicted of possessing cocaine and marijuana. ■

***R. v. Casimir***, 2006 CarswellOnt 2896 (ONCA) (CanLII)

Toronto Police Service

(Reversing *R. v. Casimir*, 2004 CarswellOnt 8613 (not in CanLII))

C was visiting a crack house. C was on probation and was prohibited from having weapons. When C was arrested in the crack house, he admitted to having a knife. C was strip searched at the crack house in a room where the door was closed. Crack cocaine was found in C's underwear.

The trial judge found a section 8 charter violation because there was no justification for the strip search in the field. The evidence of the crack cocaine was excluded and C acquitted of the drug charge.

**Reasons for Charter Violation**

The Court of Appeal accepted the trial judge's finding that C's section 8 charter rights were violated but reversed the decision to exclude the evidence. The Court

of Appeal found the strip search to be minimally intrusive, it was done in the privacy of a bedroom with the door closed and the officer conducting the search reasonably believed that he was in compliance with the police manual in doing the search in the field. The Court of Appeal noted that C was charged with a serious drug offence while he was on probation for a similar offence and while he was in a crack house. The administration of justice would be brought into disrepute if the evidence was excluded. The evidence should not have been excluded. The acquittal was quashed and a new trial ordered. ■

***R. v. Wilson***, 2006 ONCJ 434 (CanLII)

Halton Regional Police Service

W was arrested for domestic assault and impaired driving. W was subjected to a pat down when arrested.

While in the booking room of the police station, W was directed to drop his pants and underwear. W was not held for a show cause hearing (a bail hearing). The searching officer did not take any notes of the strip search and did not receive authorization for the search.

### **Reasons for Charter Violation**

The trial judge found the strip search to be a flagrant violation of W's section 8 charter rights. There were no reasonable and probable grounds for the strip search. W was alone in a cell that was monitored by closed circuit TV. Moreover, the officers had no concerns about safety. The judge was also concerned that no notes were kept.

The evidence was excluded. The judge made recommendations to have the decision passed along to the Chief of Halton Regional Police Service so that immediate training could be provided to all officers. The judge also recommended that defence counsel routinely ask for disclosure with respect to what, if any, searches were conducted on their clients, the notes with respect to the manner of the search, and the grounds for conducting the search. ■

***R. v. Avarino*, 2006 ONCJ 222**

Peel Regional Police

(Not available on CanLII)

A was arrested for operation over 80 and brought to the police station for a breath test. A was strip searched and his genitals were exposed. The search was done before the breath test.

**Reasons for Charter Violation**

The trial judge found a violation of section 8 of the charter for the strip search and based on *R. v. Flintoff*, (1998), CanLII 632 (ONCA) found this to be a flagrant violation. The evidence of the breath tests were excluded. ■

***R. v. Login*, 2006 ONCJ 51 (CanLII)**

Ontario Provincial Police

L was at a farmer's field with a rifle, dressed in camouflage, hunting rodents with the permission of the farmer. Everything L was doing was lawful. The field was beside a school and when a soccer practice began, L left. A call was made to the police. L was detained and arrested at his home. He was strip searched in his driveway in view of his family.

**Reasons for Charter Violation**

The trial judge found a violation of section 8 of the charter for the strip search. There were no grounds to do the search at the scene and in front of his family. Other charter violations were involved as well, and all the evidence was excluded. ■

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

Toronto Police Service

M was arrested for attempted murder (upgraded to murder when the victim died). M was strip searched when he arrived at 23 Division. M was pat down searched and no weapons were found. Officers strip searched M because they believed he was a flight risk and would be held for bail.

The strip search was carried out as a matter of routine, no authorization was sought from a senior officer and no notes were taken. M was still being investigated and the strip search was done before a videotaped interview and before he was placed into the cells.

### **Reasons for Charter Violation**

The strip search was a violation of section 8 of the charter. There was not enough consideration given to *R. v. Golden*: insufficient grounds, no authorization from senior officer and the search occurred not prior to detention in cells but before a video interview. The strip search was unlawful.

While the charter violation was serious, the judge found that a strip search would have occurred inevitably. The evidence was not excluded. ■

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

Toronto Police Service

B was arrested for attempted murder. At the time of the arrest, B was in his bedroom, wearing boxer shorts. A pat down search was conducted and the arresting officers were satisfied that there was no weapon. B was then strip searched at the police station.

### **Reasons for Charter Violation**

The trial judge found the strip search to be unlawful. The arresting officer testified that he intended to show cause why B should be detained pending trial. This officer testified that a strip search was justified on the basis that B would, in any event, be strip searched when he entered the custodial facility. The judge found that such routine strip searches were contrary to the decisions in *R. v. Golden* and *R v Flintoff*. B's statement to the police was excluded. ■

***R. v. F.N.*, 2005 ONCJ 412 (CanLII)**

N was arrested on a material witness warrant. The arresting officer had no concerns about safety and did not search N. At the police station, a strip search was authorized by the Officer-in-Charge because N was being held overnight and taken to court the next day. The police tried to conduct the search in a very reasonable manner but N resisted. N was charged with assault peace officer.

**Reasons for Charter Violation**

The trial judge found a section 8 charter violation. Even though there were legitimate concerns around safety because N was entering the cells, the police did the strip search as a matter of routine policy and gave no consideration to N's circumstances as a material witness versus a criminal detainee. No pat down or less intrusive search was conducted. *R. v. Golden* was not properly considered. This was not the clearest of cases requiring a stay of proceedings. On the evidence, N was found not guilty. ■

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

Halton Regional Police Service

F appealed her conviction for impaired driving to the Superior Court.

F was arrested for impaired driving and held for a few hours to sober up. F was 51 years old with no criminal record. F was strip searched. No pat down or electronic wand search occurred. No notes were taken of the strip search and the officer conducting the search could not recall all of the details. The officer did not think that she required reasonable and probable grounds to conduct the strip search, but testified that it was not her personal policy to strip search everyone. The trial judge did not find a section 8 charter violation.

**Reasons for Charter Violation**

The summary conviction appeal judge found a breach of F's section 8 charter rights. There must be some foundation and grounds for the search. There were none advanced in this particular case. The summary conviction appeal judge

found that a stay of proceedings was not the appropriate remedy. There was no causal or temporal connection to the evidence. Therefore, the evidence was not excluded. ■

***R. v. Grenke***, 2004 ONCJ 121 (CanLII)

Toronto Police Service

G was arrested for impaired driving and operation over 80. G was to be released on a promise to appear but he was very intoxicated. G was taken to 14 Division to be held until he sobered up. At 14 Division he was strip searched and placed into the cells. G was released a few hours later.

#### **Reasons for Charter Violation**

The trial judge held there was a section 8 charter violation. The search was not authorized by law as there were no reasonable grounds for the search. The officer had misunderstood the Toronto Police Service's policy that had been enacted after *R. v. Golden* (which stated there needed to be grounds for a strip search with short term detainees). A stay of proceedings was not warranted. At the sentencing proceedings, the judge considered the charter violation and reduced the sentence from 30 days to 14 days in prison. ■

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

Toronto Police Service

C was a 15 year-old female with no criminal record. She was arrested for assault with a weapon, two counts of assault causing bodily harm and possession of a weapon for a dangerous purpose.

C was strip searched at the station. The strip search was conducted adhering to the guidelines in *R. v. Golden*. The police testified the strip search was done because of the charges with weapons, for safety and potentially for evidence. The police officer who conducted the strip search was not informed that a pat down search had revealed nothing. C was released on an undertaking.

### Reasons for Charter Violation

The trial judge held that the arrest was lawful and the manner of the strip search was reasonable. However, the police did not have reasonable grounds for the strip search. The arrest took place eight days after the offence. C was alleged to have used a belt to assault an individual. Further, C was not being held for a show cause hearing (a bail hearing).

A stay of proceedings was not warranted. If a conviction was entered, the trial judge did not preclude the possibility that the section 8 charter violation would factor into the sentence imposed. ■

*R. v. Thomas*, 2004 CanLII 8097 (ONSC)

Quinte West OPP

(Affirmed in *R. v. Thomas*, 2005 CarswellOnt 3849 (ONCA))

Officers entered T's apartment with a search warrant and arrested T for possession of crack cocaine for the purposes of trafficking. A small quantity of marijuana was found in the apartment but no crack cocaine. T was then arrested for possession of marijuana.

T was taken to the police station and strip searched. The strip search was done in keeping with the guidelines from *R. v. Golden*. Seven grams of crack cocaine were found hidden in T's rectal area.

### Reasons for Charter Violation

The strip search was conducted reasonably. The judge found that there would have been reasonable and probable grounds for the strip search (uncovering of further evidence and the custody of T in general population). However, the officer who conducted the strip search did not personally have the grounds to conduct the strip search.

The seriousness of the charter violation was lessened by the fact that the lead officer, with knowledge of the situation, had reasonable and probable grounds for the strip search and could have done it or authorized it to be done. Trafficking is a serious offence and the evidence was not excluded. ■

**R. v. Jackson**, [2004] O.J. No. 4168 (C.J.)

Toronto Police Service

(Not available on CanLII)

J was apprehended by store security for allegedly trying to steal food items. J assaulted the security guard while being apprehended. J was arrested by the police and taken to police station. A frisk search revealed no weapons.

J was strip searched at the station. The sergeant who authorized the strip search did not testify. The two officers who recommended the strip search gave conflicting testimony about why they asked for the strip search. One of the officers said it was policy to strip search someone being put into a cell by themselves and the other articulated individualized concerns about J and whether J had a weapon.

**Reasons for Charter Violation**

The trial judge found the strip search was not reasonable as incidental to arrest, and was a violation of section 8. A stay of the charges was granted. The trial judge found the police were either acting in defiance or at least ignorance of judicial decisions. ■

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

Peel Regional Police

B was arrested for assault and forcible confinement. At trial, B brought a charter application regarding two strip searches.

The trial judge found that B had been strip searched twice, once by Peel Regional Police at the police station as a matter of routine policy because he was to be transported to court. The second strip search occurred at the courthouse. Both strip searches were conducted reasonably. B was cooperative and polite. There were no suspicions that he had any contraband or weapons.

The trial judge found the first strip search reasonable. The second strip search was not legally justified. There was no reason for a second strip search to have

been conducted. The trial judge held that this was not the clearest of cases that warranted a stay of proceedings. B was convicted at trial.

### Reasons for Charter Violation

On appeal, on the question of the strip search, the summary conviction appeal judge held that the trial judge erred in law by not considering the issue of the custodial setting in finding that the first strip search was reasonable as a matter of routine. The summary conviction appeal judge held that the first search was reasonable because B was to be transported to the courthouse. The summary conviction appeal judge did not see a significant distinction between those being integrated into a prison population and those being placed in busy court cells at courthouses.

The second strip search was unreasonable because there was no justification for it. This was not the clearest of cases that warranted a stay of proceedings. ■

***R. v. Clarke***, 2003 CanLII 64244 (ONSC)

Toronto Police Service

Three individuals were arrested as a result of a protest at Queen's Park in Toronto. C was arrested for counselling assault police and counselling participation in a riot. H and P were arrested for participating in a riot. All three were arrested a month after the events at Queen's Park. All three individuals were strip searched. C was subjected to three strip searches.

C was strip searched upon arrival at the police station. He was completely naked during the search. After an interview, C was strip searched a second time and was once again completely naked. The officers conducting the second search did not know that C had already been strip searched. C was held overnight for a show cause hearing (bail hearing). C was required to get a surety before being released. His surety did not attend court in time and C was transported to the Toronto City jail. Upon arrival at the jail, C was strip searched a third time.

H and P were released with surety. Their sureties arrived on time and they were released from the courthouse.

### Reasons for Charter Violation

The first searches of C, H and P were reasonable. They were justified on safety and security grounds: they were being taken before a justice of the peace, would be transported in a police wagon, likely in the company of other prisoners, and at Old City Hall, they would be mingling with other prisoners in the bull pen.

The second and third strip searches of C were unreasonable and violated his section 8 charter rights. The searches of C, H and P were also not conducted reasonably. The police did not take proper notes; and contrary to the Toronto Police Service's policy, the officers did not consider the appropriateness of having C, H and P remove and replace one item of clothing at a time.

The judge highlighted that *R. v. Golden* had not been decided when C, H and P were subjected to strip searches. Further, the policy of the service was in conflict with *R. v. Flintoff* – the policy required a strip search in all cases where an accused was lodged in a cell. The judge also noted that at the time of the trial, several officers were not aware of the effect of *Golden* (which was released in 2001).

This was not the clearest of cases warranting a stay of proceedings. The judge considered that there was a lack of uncertainty in the law around strip searches. In relation to C, the evidence was not excluded. ■

***R. v. Padda*, 2003 CanLII 52405 (ONCJ)**

Peel Regional Police

P was arrested for impaired driving. At the police station, P was subjected to a strip search, where he dropped his pants and undergarments and turned around for the officers. It lasted a few seconds. The search was conducted in private with male officers.

### Reasons for Charter Violation

The trial judge found the strip search was unconstitutional. There were no reasonable and probable grounds to conduct the search. There was nothing about P that caused any concern. Rather, the search was a matter of routine done when

lodging a prisoner. Since March 2002, the policy at Peel Regional Police had changed and prisoners like P are subjected to a pat down search instead.

A stay of proceedings was not warranted. According to the trial judge, it was noteworthy that before *R. v. Golden*, which was decided a few months prior to P's search, the leading case was *R. v. Coulter*, [2001] OJ No 5608 (SCJ). *Coulter* approved of the practice of conducting a strip search of prisoners being lodged in cells. A charter remedy on sentencing would be more appropriate. ■

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

Toronto Police Service

(Not available on CanLII)

Two girls (aged 17 and 15) turned themselves in to 55 Division. They were arrested for robbery. The police decided to hold them for a show cause hearing (a bail hearing). There was no intention to seek detention, rather the police wanted a surety condition as part of their release. Neither girl had a record nor interactions with police in the past.

They were both strip searched (completely naked and forced to spread arms and do deep knee bends for inspection) and their uncovered breasts could be seen in a video. Their parents were not told about the strip searches. The searches were conducted because the girls were being held and because they were charged with robbery.

### **Reasons for Charter Violation**

The trial judge found the strip search was a violation of section 8 of the charter. The decision to detain them until show cause and not allow them to stay with parents led to the strip search. The strip search was done as a routine and with no reasonable and probable grounds to justify it. The manner of the search was also unreasonable.

This was a case that required a stay of proceedings as the only remedy. A reasonable member of the public could conclude that the two girls were, through the medium of a strip search, punished even before a trial. ■

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

Peel Regional Police

(Not available on CanLII)

A was arrested for impaired driving. The decision was made to lodge A in the cells and he was strip searched (took off his pants and undergarments) in a hallway (where people could wander by and it was subject to video). No assessment was made if a strip search was required.

The Officer-in-Charge of the station testified that while he was in charge of the station, 100 per cent of the prisoners would be strip searched. This was done even though the police policy stated that such searches were discretionary.

**Reasons for Charter Violation**

There were no reasonable and probable grounds given for the search and the search was not done reasonably (being in a public place). It was a violation of section 8 of the charter. A stay of proceedings was appropriate. The conduct was serious and the Officer-in-Charge of the station ignored police policy. ■





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