



01-02 Appendix B

Risk Assessment – Type of Search

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Rationale

The right to search as an incident to a lawful arrest is found in common law, and has been upheld by the Supreme Court, as long as the search is conducted for a valid objective and is not conducted in an abusive fashion.

- Cloutier v. Langlois (Supreme Court of Canada) (1990)
- R. v. Flintoff (Ontario Court of Appeal) (1998)
- R. v. Coulter (Ontario Court of Justice) (2000)
- R. v. Golden (Supreme Court of Canada) (2001)
- R. v. Clarke, Heroux and Pilipa (Ontario Superior Court of Justice) (2003)
- R. v. Mann (Supreme Court of Canada) (2004)
- R. v. McGuffie (Ontario Court of Appeal) (2016)
- R. v. MacPherson (Ontario Native Council on Justice) (2018)
- R. v. Tonkin (Ontario Superior Court of Justice) (2020)

As an incident to arrest a police officer may search for

- weapons
- anything that could cause injury (including drugs and alcohol)
- anything that could assist in a person's escape
- evidence

For safety reasons, every person who is brought into a police facility under arrest shall be subject to a search.

When assessing the type of search, the Officer in Charge / police officer shall on a case by case basis, evaluate the circumstances relevant to the individual to be searched and determine the appropriate type of search required to address any risk factors, keeping in mind that the safety of the officers, the individual and to others is paramount. The Officer in Charge is responsible for ensuring that the type of search appropriately addresses the risk factors associated to the current arrest including those related to the person, and logistical issues such as the type of transportation and contact with others that this individual is expected to encounter.

Strip Searches

In 2001, the Supreme Court of Canada, in the matter of R. v. Golden, while upholding the common law right to search a person who had been lawfully arrested, placed restrictions on police officers contemplating Strip searches.

In light of this decision, the Toronto Police Service has adopted the following official policy in regard to Strip searches of persons who are in custody, incident to arrest.

When a person has been lawfully arrested and transported to a police facility, an assessment of the risk factors shall be conducted. Where reasonable grounds exist to conduct a Strip search, a Strip search shall be conducted. Where reasonable grounds do not exist for a Strip search, a Frisk search shall only be conducted. (A Strip search may be conducted if reasonable grounds are established as a result of a Frisk search first.)

Risk Factors

Officers contemplating a Strip search of a person shall consider all the circumstances, including but not limited to

- the details of the current arrest
- the history of the person
- any items already located on the person during a Protective or Frisk search
- the demeanour or mental state of the individual
- the risks to the individual, the police, or others, associated with not performing a Strip search
- the potential that the person will come into contact with other detainees, creating an opportunity for the person to hand off contraband, weapons, etc...to another prisoner (R. v. Coulter)

In addition to any factors being considered pertaining to the individual person, the following set of circumstances represents the heightened safety concerns that are common to **all** persons held for a Show Cause hearing

- lodged in a cell awaiting transportation
- direct contact with other persons in custody during transportation and lodging, creating the potential for conflict and/or weapons/contraband being passed from one person to the next
- unsupervised while being transported in a prisoner transportation wagon
- lodged in court cells with other persons in custody and persons in custody arriving directly from the correctional system
- transportation, lodging, escorting of persons in custody at court conducted by unarmed court officers
- direct contact with booking officers, special constables, correctional officers, lawyers, and other court staff who are unarmed and have an expectation that every person in custody has been thoroughly searched to ensure officer, person in custody and public safety
- the duty to protect persons in custody while in custody and their expectation that while in custody their safety is not compromised
- the Officer in Charge cannot know the background/history/state of mind of all the persons in custody that will be brought into the system on any given day, but is required to ensure their protection

All persons who are held in custody pending a Show Cause hearing are deemed to be entering the prison population. In assessing the appropriate type of search, the Officer in Charge shall take into account the heightened safety concerns created by this situation.

Nevertheless the fact that a person is being held for a Show Cause hearing and may come into contact with other persons in custody does not, on its own, justify a Strip search.

Members shall consult with the Officer in Charge prior to conducting a Strip search at a police station.

Prohibitions

The Supreme Court has ruled that Strip searches in the field will only be justified where there is a demonstrated necessity and urgency to search for weapons or objects that could be used to threaten the safety of the accused, the arresting officers or other individuals. In this case, officers would have to show why it would have been unsafe to wait and conduct the search at the police station.

Strip searches shall not be conducted in the field for the sole purpose of preserving evidence. When a Strip search must be conducted in the field, it will be done in a private area with only the searching officers able to view the person being searched, where possible. When a Strip search must be conducted in the field, the searching officers shall immediately notify the Officer in Charge upon their arrival at the police station.

Strip searches shall not be videotaped. Any benefit to videotaping the search is outweighed by the potential of causing unnecessary embarrassment to the person being searched. Further, in cases where a searching area has video equipment installed, the person being searched will be advised that the search is not being videotaped.

Body Cavity Searches

Body Cavity searches shall not be performed by any member of the Toronto Police Service.

Where there are reasonable grounds to believe that a person under arrest has secreted weapons or evidence in a body cavity, the person shall be immediately transported to a medical facility for treatment.

The person may consent to having the item or substance removed by a qualified medical practitioner. If the person is not willing to have the medical practitioner assist with the removal, they shall be restrained and held in isolation pending a Show Cause hearing. The person shall be continuously monitored to ensure their safety and the safety of members of the Service until recovery of the item or substance is made.

We are dedicated to delivering police services, in partnership with our communities, to keep Toronto the best and safest place to be.

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