



Privacy Street Youth Street Stops and Beyond!

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Privacy and Street Stops

- 1) Legal Backdrop
- 2) Legalities and Realities
- 3) Evidence Tips
- 4) How to help trigger and preserve my privacy rights if stopped by police?
- 5) What to do about negative interactions?
- 6) Stops and searches at your agency
- 7) Record Keeping

Legal Backdrop

Privacy Laws

Civil laws

Professional Obligations

Government policies

Charter of Rights and Freedoms

Other laws

Legalities and Realities

Criminal Code and Drug Law Offences

Street Law Smarts #12, 20

Provincial Offences

Street Law Smarts #13-19

By-laws

Street law Smarts #18

Legalities and Realities

◆ Criminal Code & Drug Law Offences

"you look like a robbery suspect" "you got any drugs on you?"
"we're checking everyone's i.d." "there's been a robbery in the area"

-mischief -possession of drugs -assault

◆ Provincial Offences

-liquor licence act – drinking in public – drunk in public place
-trespass to property act – engage in a prohibited activity
-safe streets act –aggressive panhandling – panning on roadway

◆ Bylaws

-parks –no overnight sleeping – no damage to property
-ttc –no loitering - no dogs or big items during rush hours

Evidence Tips

Street Law Smarts #2

Interaction Tips

No One Is Illegal Know Your Rights

http://toronto.nooneisillegal.org/sites/default/files/KYR%20ENGLISH%20PDF%20FINAL_0.pdf

How to help trigger your rights – WHAT IS DETENTION?

- ◆ Detention is a suspension of the individual's liberty interest by a significant physical or psychological restraint.

R. v. Grant, [2009] S.C.J. No. 32 at para. 44.

- ◆ An officer must have: “reasonable grounds to suspect in all the circumstances, that the individual is connected to a particular crime and that such detention is necessary.”

R. v. Mann, [2004] S.C.J. No. 49 at para. 45.

- ◆ Reasonable grounds is described as: “...a constellation of objectively discernible facts which give the detaining officer reasonable cause to suspect that the detainee is criminally implicated in the activity under investigation.”

R. v. Simpson, (1993) 12 O.R. (3d) 182 (Q.L.) at p. 15.

WHAT ARE REASONABLE GROUNDS?

- ◆ Evidence that would convince an average person that a particular offence had been, or was about to be committed.

SEARCHES UPON DETENTION

- ◆ “Where a police officer has reasonable grounds to believe that his or her safety or that of others is at risk, the officer may engage in a protective pat-down search of the detained individual. Both the detention and the pat-down search must be conducted in a reasonable manner”.
- ◆ “In this connection, I note that the investigative detention should be brief in duration and does not impose an obligation on the detained individual to answer questions posed by the police.....”

R v. Mann, supra, at para. 40, 45.

How to help trigger and preserve my rights if I am stopped and searched by the police?

Ask – can I go?

-triggers rights on detention (know why and obtain counsel)

Ask – why am I being stopped?

-asserting rights upon detention

Say – I don't consent to as search

-declaring right to no unreasonable searches

MAYBE Say – I want to speak to a lawyer

-obtaining rights upon detention

How to help trigger and preserve my **privacy** rights if I am stopped and searched by the police?

Though the police are often not acting under the proper legal authority – we give the opinion that you should identify yourself to the police. And then,

Say - **NOTHING**
ELSE

Case Study #1 - Drinking in the Park

- ◆ Sid and Lee were each drinking a can of beer at Trinity-Bellwoods park.
- ◆ Officer Smart came up on a bike and asked Sid and Lee what their names were. Sid and Lee gave their names. Sid and Lee were unsure if Officer Smart was going to write them tickets for drinking in public.
- ◆ Officer Hunt then arrived on a bike and he asked Officer Smart, 'did you search them?' Officer Smart replied, 'no'. Officer Hunt then started to search Sid. Sid said, 'please don't search me – why are you searching me?' Officer Hunt replied, 'because there was a robbery in the area'.

Case Study #1- Drinking in the Park

- ◆ Officer Hunt then took Sid's hat off and put his hands into Sid's jacket pocket. Officer Hunt pulled out a cigarette package from Sid's inside jacket pocket and proceeded to open the package. He found a baggie with some marijuana in it, and arrested Sid for possession of marijuana.
- ◆ Q: was Officer Hunt's search lawful?
- ◆ Q: did Sid trigger and try to preserve his right to privacy?

Case study #1- drinking in the park

The *Liquor Licence Act* prohibits the unlawful consumption of alcohol as follows:

“31(2) No person shall have or consume liquor in any place other than,
(a) a residence;
(b) premises in respect of which a licence or permit is issued; or
(c) a private place as defined in the regulations.”

Liquor Licence Act, R.S.O. 1990, CHAPTER L.19, s. 31.

Case Study #1- drinking in the park

The *Liquor Licence Act* does not authorize a police officer to search the body of an individual observed allegedly contravening section 31 (2) of the *Act*:

“The province, in passing this piece of legislation, has determined that the process will be initiated against anyone contravening these provisions by way of a notice of offence under the Provincial Offences Act and only allows for a warrantless arrest if a person is intoxicated in public and there is a safety issue, or if in contravention of other sections, such as if the person refused to identify him or himself. Otherwise, no arrest and no search.”

R. v. O.A.S., (2002) O.J. No. 2271 at para.14.

What to do about negative interactions?

- ◆ Criminal charges?
- ◆ *Charter* rights remedy?
- ◆ Civil suit?
- ◆ Human rights hearing?
- ◆ Lodge a complaint?
- ◆ Advocacy projects; lobby for change?

What to do about negative interactions?

Street Law Smarts #23: Police Complaints

Street Law Smarts #13: Security Guards

Street Law Smarts #1: Where to get legal help

Remember: evidence!

- ◆ Regardless of your avenue of redress, evidence is essential! Relevant evidence includes:
 - Identifying notes
 - Pictures and videos
 - Witnesses
 - Medical reports
 - Police reports
 - Badge #'s and Division #'s

Case study #2- Hurt

- ◆ You are 22 years old and live in a rooming house. You were diagnosed as 'bipolar' a few years ago, but you don't always take medication.
- ◆ One evening six months ago you were sitting on the sidewalk the corner of Queen St. W. and Spadina, panhandling with friends. Two cops came up and started to give a ticket to you. You got mouthy (you don't usually, but find you can act weird when not on medication for bipolar), saying you weren't doing anything wrong. You insulted and swore at one of the cops, and your friends laughed.
- ◆ The one cop got angry back, called you a bunch of names and kicked at your blankets near where your dog was lying.
- ◆ You got angry. The cop could have hurt your dog. You got up to hit the cop.
- ◆ Before you could hit the cop, he grabbed both your arms and threw you to the ground. The cop then dragged you to the alley near Youthlink. You were yelling and trying to hit him. Once in the alley, the cop started hitting you, punching you in the stomach. You remember one hit on your head, and then blacked out. You woke in the hospital with bruises everywhere.
- ◆ Since the incident, you are having frequent headaches and are having trouble remembering things. What should you do?
- ◆ You are now the young person's social worker – how can you help?

Stops and Searches at your Agency

- YPAWG Poster
- NOII forthcoming publication – Know Your Rights. Covers topics like obstructing a peace officer & compliance with law enforcement agents
- Your own policies!
- Difference between public and private spaces.
- Street Law Smarts #17:Trespassing

Protecting Against Negative Police Interactions

- ◆ Agency level
 - Document negative interactions with the police.
 - Open a dialogue with the local division.
 - Make a joint policy that respects the Constitution.
- ◆ Individual level
 - Document negative interactions with the police.
 - Be polite.
 - Ask if you are free to go?
 - If not, ask, why?
 - If you are not free to go, ask to speak to a lawyer.
 - If being searched say, 'I don't want to be searched'.
- ◆ If injury or damage occurs, take photographs immediately
 - you never know when you may need them

Case study #3 – At the Shelter

- ◆ You are a staff at a youth shelter. Over the past six months, officers from the local division and from TAVIS have been coming to the shelter asking to investigate crimes with the youth who live there. Sometimes they have a warrant for arrest, sometimes they don't.
- ◆ When the police come in and ask questions, the youth usually answer all the questions asked and let their pockets be searched. Often, a few of the youth are arrested after being questioned and searched.
- ◆ You want to help enforce the law and protect victims, but you are worried about the youth's *Charter* rights and rights to privacy.
- ◆ You're not sure about what exactly the law says or if there are set procedures at your shelter for dealing with this stuff.
- ◆ What should you do?

Record Keeping

◆ Street Law Smarts #24-26

◆ Toronto Police Records

- incidents; suspects; charges; arrests....

- City Retention Bylaw

- Fingerprint Destruction Policy

- Vulnerable Sector Searches

- Clearance Letters

Youth records – of special consideration

Case study #4 - TTC Mishap

- ◆ You are 16 years old, and last night you were hanging out with friends. Taking the TTC home, your friend didn't have enough money for the fare. You passed back your pass, and the conductor took it from the friend. You went back, paid the fare for your friend, and asked the Conductor for your pass back. The conductor wouldn't give it to you, and called the police.
- ◆ The police came and asked your name. You gave it and then checked your name on the police database (CPIC). They said, 'I see you have a record for theft under from a year ago!'. They put handcuffs on you and pushed you around into the corner. They started writing a ticket for the TTC offence. When you asked to get the handcuffs looser, they tightened them. It hurt. The police dumped all of the belongings from your bag onto the floor. They took the handcuffs off and made you pick up all of your belongings and put it into your bag. They also made you put garbage that was on the ground into the bag. The whole thing lasted about 25 minutes.
- ◆ You had a cellphone on you and took pictures of the bruises that were left on your arms from the officers pushing you, and from the handcuffs.
- ◆ You don't want to pay the ticket, and you are mad about how the cops treated you. What should you do?
- ◆ Was it wrong for the officer to look up and disclose the record?

Useful Resources

- **Local Legal Aid Clinic**
(416) 598-0200
If you call Legal Aid Ontario, they will redirect you to your local legal aid clinic
- **Office of the Independent Police Review Director (OIPRD)**
655 Bay Street, 10th Floor, Toronto, Ontario, M5G 2K4
Tel: 416-246-7071, Toll-free: 1-877-411-4773, TTY: 1-877-414-4773
Fax: 416-327-8332, Toll-free fax: 1-877-415-4773,
Website: www.oiprd.on.ca
- **Small Claims Court**
47 Sheppard Ave. East, M2N 5N1,
Tel: 416.326.3554 (Duty Counsel- Tuesdays and Thursdays, 9-4:30)
- **The Human Rights Tribunal of Ontario**
Tel: 416-326-1312 or 1-866-598-0322, <http://www.hrto.ca/>
- **The Human Rights Legal Support Centre**
Tel: 416-314-6266 or 1-866-625-5179, <http://www.hrlsc.on.ca/>



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