Digital Companion

Windsor Review of Legal and Social Issues
Revue des Affaires Juridiques et Sociales de Windsor

Volume 1 (2014) Article 1

OPERATIONALIZING *GOLDEN*: MEASURING THE EFFICACY OF JUDICIAL OVERSIGHT

Brady Donohue

Citation Information
Brady Donohue, "Operationalizing *Golden*: Measuring the Efficacy of Judicial Oversight" (2014) 1 Windsor Rev Legal Soc Issues—Digital Companion 1.

OPERATIONALIZING *GOLDEN*: MEASURING THE EFFICACY OF JUDICIAL OVERSIGHT

Brady Donohue [*]

On September 10, 2012, Obene Darteh, a native of Ghana and a resident of Toronto, was riding his bike through an intersection when he was stopped by the Toronto Police Service for an alleged traffic violation. What followed was a litany of police misconduct, including a humiliating strip search in broad daylight; the officers required Darteh to lift his shirt and pull down his shorts and underwear.[1] This was properly characterized by the trial judge as an illegal strip search and an egregious violation of the accused's section 8 rights.[2] As a result, the cocaine discovered during Darteh's search was excluded.[3]

Over a decade ago, in *R v Golden*, the Supreme Court of Canada set out clear guidelines on when a strip search complies with section 8 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*").[4] Since that time, high profile cases have captured the public's attention, signaling that police services continue to struggle with implementing the *Golden* principles. Cases such as *R v Bonds*—where Stacy Bonds was aggressively and illegally strip searched, including having her bra and shirt cut off by members of the Ottawa Police Service—remind us of this reality.[5] Should Bonds and Darteh, both of whom are racialized, be considered isolated incidents of police misconduct, or do they reflect systemic disregard or indifference to the standards established by the Supreme Court of Canada in *Golden*? Ultimately, their experiences signal persistent systemic issues explored by the court.

This paper examines the efficacy of judicial oversight in three parts. Part I analyzes the divergent approaches taken by the Supreme Court of Canada in contemplating police compliance with section 8 of the *Charter*. Part II explores the extent police departments have operationalized the *Golden* principles in the following Canadian cities: Calgary, Montreal, Ottawa, Peel Region, Toronto, Vancouver, Windsor and Winnipeg. Current case law and academic literature on the topic suggest that omissions in policies, and a lack of understanding of how policies are operationalized, impact the way strip searches are conducted. Part III analyzes the question posed at the beginning of this paper: do the systemic issues articulated by the Supreme Court of Canada in *Golden* remain? This question is analyzed with the information provided in the previous sections, to gauge whether systemic issues persist.

The extent of illegal and unreasonable strip searches in Canada's major cities is difficult to quantify. However, case law and current police policies suggest that the principles developed in *Golden* are neglected by police services in major Canadian cities. While the judiciary can facilitate police accountability, it must be coupled with other strategies to be effective. This

[*] Brady graduated from the University of Windsor, Faculty of Law in June 2014. This paper was prepared as part of her fellowship with the Law Enforcement and Accountability Project, as supervised by Professor David Tanovich. She is especially grateful to Professor Tanovich for his continued support and encouragement. Brady presented this research at the 7th Annual Canadian Law Student Conference, held in Windsor, Ontario in March 2014. She is currently a Student-at-Law.

[1] *R v Darteh*, 2013 ONSC 233 at paras 1-3, 62, 276 CRR (2d) 37 [*Darteh*].
[2] *Ibid* at para 58.
[3] *Ibid* at para 62.
[4] 2001 SCC 83, [2001] 3 SCR 679 [*Golden*].
[5] 2010 ONCJ 561 at para 20, 79 CR (6th) 119 [*Bonds*].

paper puts forth a list of best practices that police services can use to increase accountability, arguing that police services themselves have an important role to play in proactively promoting compliance with the *Golden* principles.

PART I: DIVERGENT APPROACHES TO SECTION 8 OF THE *CHARTER*

The *Charter* has had an obvious and significant impact on the judiciary, marked by a movement away from a Crime Control Model and towards a Due Process Model.[6] In practice, this means that the "'administration of justice' include[s] not only the trial process but the investigatory process."[7] Specifically, the *Charter* has increased judicial intervention on the principle of due process. In the last ten years, Parliament has resisted judicial intervention. As a result, a strongly worded Supreme Court of Canada decision is ineffective if it is not coupled with action by Parliament.[8] This analysis is helpful in understanding the impact of the *Golden* decision. If, for example, Parliament took action in the form of a warrant requirement, *Golden* would likely have a greater influence on the way police departments operate.

The *Charter* opened the door for the judiciary to scrutinize police conduct in a way that was not available at common law. The Supreme Court of Canada has taken at least two approaches to bring police practices in line with the *Charter*. In *R v Feeney*[9], *R v Duarte*[10], and *R v Wise*[11], the Supreme Court of Canada placed the onus on Parliament to impose a warrant requirement to regulate the police. On the other hand, in *Golden*, the Supreme Court of Canada regulated strip searches directly by establishing minimum standards for the police.[12]

In *Feeney,* Justice Sopinka, writing for the majority, held that the accused had a reasonable expectation of privacy in his own home. By failing to obtain a warrant, the police gained access to the accused's home in an unlawful manner.[13] Parliament responded to the decision by enacting section 529 of the *Criminal Code*.[14] Elena Bakopanos, the Liberal Member of Parliament who introduced the bill, described its necessity as follows:

> The bill essentially creates a warrant scheme by which peace officers may obtain judicial authorization before entering a dwelling to arrest someone. The bill also sets out certain circumstances under which such warrants or authorizations are not required. Members of the public and law enforcement officials could argue that the bill does not go far enough by not giving police officers the same powers of entry and arrest they had before. I repeat before the Feeney decision. However, given that Feeney was decided on constitutional grounds, it would not be possible to restore the common law power to enter a dwelling to arrest. To put it plainly, the court has ruled that privacy interest must be balanced against the interest of the state to arrest in a dwelling house and that balancing of interest must be done by judges.[15]

---

[6] F L Morton, "The Political Impact of the Canadian Charter of Rights and Freedoms" (1987) 20:1 Can J Pol Sc 31 at 37. See also Herbert L Packer, "Two Models of the Criminal Process" (1964) 113:1 U Pa L Rev 1.
[7] *R v Cohen*, 148 DLR (3d) 78 at para 93, 33 CR 3(d) 151 (BCCA).
[8] Kent Roach, "Twenty Years of the Charter and Criminal Justice: A Dialogue between a Charter Optimist, a Charter Realist and a Charter Skeptic" (2003) 19:2 SCLR 39 at 42.
[9] [1997] 2 SCR 13, 146 DLR (4th) 609 [*Feeney*, cited to SCR].
[10] [1990] 1 SCR 30, 65 DLR (4th) 240.
[11] [1992] 1 SCR 527, 11 CR (4th) 253.
[12] *Golden*, *supra* note 4 at paras 100-01
[13] *Supra* note 9 at 37.
[14] RSC 1985, c C-46, s 529.
[15] *House of Commons Debates*, 36th Parl, 1st Sess, No 25 (31 October 1997) at 1000-05.

Like *Feeney,* the *Golden* decision was concerned with unjustified searches by the state. On January 18, 1997, members of the Toronto Police Service executed a take-down operation in a sandwich shop.[16] As a result of observations made by the police prior to the take-down, the appellant, a black male, was arrested for trafficking cocaine.[17] Following the arrest, one of the officers conducted a pat-down search of the appellant and a visual inspection of his underwear and buttocks.[18] It was at this time that the officer noticed a clear plastic bag protruding from the accused's buttocks. The officers unsuccessfully tried to retrieve the bag, at which point they required the appellant to bend over a table. The appellant's pants were lowered to his knees and his underwear pulled down.[19] The officers were eventually able to retrieve the bag and its contents: 10.1 grams of crack cocaine.[20] At trial, the appellant sought to have the evidence excluded under sections 8 and 24 of the *Charter*.[21]

In rendering its decision, the Supreme Court of Canada reiterated that if the search is authorized by law, the law is reasonable, and the search is conducted in a reasonable manner, there is no violation of section 8 of the *Charter*.[22] The court defined a strip search as "the removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person's private areas, namely genitals, buttocks, breasts (in the case of a female), undergarments."[23] The court acknowledged that strip searches are a "significant invasion of privacy and are often a humiliating, degrading and traumatic experience for individuals subjected to them."[24] As a result, strip searches "cannot be carried out simply as a matter of routine police policy."[25] The court was explicit in warning that a frisk or a pat-down search will suffice for the purpose of determining if the accused has concealed weapons on his or her person. To that end, the court held that "the mere possibility that an individual may be concealing evidence or weapons upon his person is not sufficient to justify a strip search."[26]

The issue of a warrant requirement was raised by the Canadian Civil Liberties Association ("CCLA") but was not imposed by the court.[27] This paper demonstrates that compliance with the *Golden* principles remains an issue, and a warrant requirement for strip searches is worth revisiting. In determining the best approach for conducting a strip search, the court in *Golden* adopted guidelines from the United Kingdom's *Police and Criminal Evidence Act 1984*.[28] The guidelines, as cited by the court, pose eleven questions, including:

---

[16] *Golden*, *supra* note 4 at paras 27-29.
[17] *Ibid* at paras 27-28.
[18] *Ibid* at para 30.
[19] *Ibid* at paras 30-32.
[20] *Ibid* at para 33.
[21] *Ibid* at para 35.
[22] *Ibid* at paras 44-45.
[23] *Ibid* at para 47.
[24] *Ibid* at para 83.
[25] *Ibid* at para 90.
[26] *Ibid* at para 94.
[27] *R v Golden*, 2001 SCC 83 (Factum of the Canadian Civil Liberties Association at para 11); *ibid*.
[28] *Police and Criminal Evidence Act 1984* (UK), 1984, c 60 [*PACE*]; *Golden*, *supra* note 4 at para 101.

> 1. Can the strip search be conducted at the police station and, if not, why not?...
> 3. Will the strip search be authorized by a police officer acting in a supervisory capacity?...
> 7. Will the strip search be carried out in a private area such that no one other than the individuals engaged in the search can observe the search?
> 8. Will the strip search be conducted as quickly as possible and in a way that ensures that the person is not completely undressed at any one time?...
> 11. Will a proper record be kept of the reasons for and the manner in which the strip search was conducted?[29]

The court concluded that the "decision to strip search was premised largely on a single officer's hunch".[30] This, coupled with the absence of exigency, made the decision to strip search unreasonable.[31] The Supreme Court of Canada was also careful to note the disproportionate impact strip searches have on racialized communities.[32]

By adopting the *PACE* regulations in its decision, the Supreme Court of Canada legislated a regime for section 8 compliance. While the court recommended further legislative guidance on the issue, Parliament has yet to respond.[33] Part II of this paper seeks to understand the extent police departments have adopted this regime.

PART II: IMPLEMENTING *GOLDEN*—EXPERIENCES OF EIGHT CANADIAN CITIES

To conceptualize the extent *Golden* is operationalized, Freedom of Information requests were sent to eight Canadian cities: Calgary, Montreal, Ottawa, Peel Region, Toronto, Vancouver, Windsor and Winnipeg. The request asked for three things. First, the most recent policies and procedures relating to strip searches. Second, any data on when and under what circumstances searches are carried out. Third, whether the police department in question collected data on race, or if they had a policy to that effect.

The policies are analyzed using the following questions:

> (1) Does the policy include the Supreme Court of Canada's assertion that strip searches are humiliating and degrading, and how is strip search defined?
> (2) Does the policy include the eleven *Golden* principles?
> (3) Does the policy provide guidance as to when and under what circumstance a strip search can be conducted?
> (4) Does the policy respond to case law, post-*Golden*? For example, does the policy include special provisions for individuals who identify as transgender?
> (5) How is the strip search recorded? [34]

This analysis is summarized in Figure 1 below. Figure 2 visually demonstrates compliance with the *Golden* principles.

---

[29] *Ibid*.
[30] *Ibid* at para 110.
[31] *Ibid*.
[32] *Ibid* at para 83.
[33] *Ibid* at para 103.
[34] *Forrester v Peel (Regional Municipality) Police Services Board*, 2006 HRTO 13, 56 CHRR 215 [*Forrester*].

Figure 1: Review of Police Procedures

	Strip search defined	**Incorporates 11 *Golden* Principles**	**Guidance on when and how may be conducted***	**Transgender provisions**	**Record of a strip search**
Calgary					
Montreal					
Ottawa					
Peel					
Toronto					
Vancouver					
Windsor					
Winnipeg					

Black = Complete Compliance (full compliance with the *Golden* decision)
Grey = Partial Compliance (for example, some but not all of the *Golden* principles are incorporated in the policy)
White = No Compliance (the measure is not included in the policy)
* This measure is hard to quantify in a chart and fails to capture the full spectrum of guidance in this area of the law

Figure 2: *Golden* Principles

***Golden* Principle**	**Calgary**	**Montreal**	**Ottawa**	**Peel**	**Toronto**	**Vancouver**	**Windsor**	**Winnipeg**
At the police station and if not, why not?								
Ensures the health and safety of all involved?								
Authorized by an officer in charge?								
Officers same gender as person being searched?								
Minimum force necessary?								
Conducted in a private area?								
Conducted as quickly as possible?								
Detainee given the option of removing object discovered?								
Involve only a visual inspection of the arrestee's genital areas?								
Proper record of the reason and the manner?								

Black: Complete Compliance
Grey = Partial Compliance
White = No Compliance

A. Calgary

The Calgary Police Service provided one policy. The policy was updated in 2013 and adopts many of the *Golden* principles.[35] The policy highlights that the mere possibility a person may be concealing evidence or weapons is insufficient to justify a strip search.[36] Part 3 of the policy is a verbatim adoption of the *Golden* principles, yet they appear under the heading "Determining the Reasonableness of Conducting a Strip Search".[37] The policy also provides insight into how to conduct a strip search with individuals who identify as transgender.[38] The *Golden* requirement that a strip search be recorded is not dealt with by the policy, but the policy indicates that officers are required to record a strip search in their notebooks.[39]

The policy reflects a holistic application of the *Golden* principles. However, Part 7(1) of the policy states that prior to being lodged in cells, a prisoner may be strip searched where a frisk search would not reasonably ensure safety. This instruction is confusing—earlier parts of the policy indicate that a frisk search is sufficient for ensuring safety. Following *Golden,* strip searches conducted just because a prisoner may come in contact with the prison population have been found to be a violation of section 8.[40] Judges have emphasized the need for a case-by-case analysis of all strip searches. Part 7(1) does not preclude a case-by-case analysis so much as it justifies a strip search where it may not be necessary.

The Calgary Police Service does not collect data on when and under what circumstances a strip search is conducted. While the Calgary Police Service does collect data on race as a description of subjects, no official policy on the collection of data on race was produced.[41]

B. Montreal

The Service de Police de la Ville de Montréal ("SPVM") provided one policy on strip searches. The directive was last updated in 2005, and it includes factors to be considered when deciding the type of search and the amount of force to be used. These factors include: the gravity of the offence, the danger to the police officer, the time and location of the search, and other circumstances. A strip search is defined as the visual inspection of a person's intimate body parts and underneath their clothes, by removal or displacement in part or completely.[42] The policy warns that a strip search should never be conducted as a matter of routine. As a result, a police officer must have reasonable grounds to conduct the search, and the search must be conducted in a reasonable manner.[43] For a search to be conducted in a reasonable manner, it must comply with the *Golden* principles.[44] Officers are required to record strip searches in their notebooks. The SPVM does not collect data in relation to strip searches or race.

---

[35] Calgary Police Services, *Search of Person Policy* (2013) [unpublished].
[36] *Ibid*, part 1(2).
[37] *Ibid,* part 6(3)(a).
[38] *Ibid,* part 4(7)(a).
[39] Letter from Anita Nixon, Disclosure Analyst, to Brady Donahue, LEAP Fellow (30 January 2013) [Nixon Letter].
[40] See e.g. *R v Carrion-Munoz*, 2012 ONCJ 539, 2012 39 MVR 144 [*Carrion-Munoz*]; *R v Mesh*, 2009 OJ No 6194 (CJ) [*Mesh*] (charges stayed); *R v Samuels*, 2008 ONCJ 85, 168 CRR (2d) 98 (charges stayed); *R v F (RL)*, 2005 ABPC 28, 69 WCB (2d) 547.
[41] Nixon Letter, *supra* note 39.
[42] Service de police de la ville de Montréal, *Pouvoirs de Fouille*, (2005) [unpublished].
[43] *Ibid,* part 2.2(a).
[44] *Ibid,* part 2.2(b).

The SPVM policy is problematic in three ways. First, given that it was last updated in 2005, it has not adequately responded to changes in case law, including the need for special provisions for individuals who identify as transgender. Second, by indicating that searches should be conducted based on the "gravity of the offence", the policy implicitly undermines the *Golden* principles. The decision to strip search should be reliant on reasonable grounds, primarily driven by officer safety and the discovery of contraband. Finally, the SPVM policy does not address what constitutes reasonable grounds.[45]

C. Ottawa

The Ottawa Police Service provided one policy regarding the search of a person.[46] The policy was first approved in 2002 and last updated in 2010, likely as a result of the media attention generated by the *Bonds* case. The policy is attentive to the assertion in *Golden* that a strip search is inherently humiliating, but it does not define what constitutes a strip search or include guidance on how to conduct a strip search.[47] It falls short of adhering to all of the *Golden* principles because it does not include guidance on how to conduct a strip search. Specifically, the policy excludes the *Golden* principles that a person should never be left fully naked, and that a strip search should be conducted as quickly as possible. What constitutes reasonable grounds is not explored in the policy—officers are directed to conduct a strip search if they have reasonable grounds to do so. On a positive note, officers are given special instructions on how to conduct a strip search for individuals who identify as transgender.

Case law suggests however, that the Ottawa Police Service continues to neglect the *Golden* principles**.** In January 2013, a young man was arrested outside a downtown area bar for possession of a firearm. He was strip searched, and the trial judge found that although the search was reasonable, it was conducted in an unreasonable manner. The officers charged with the search failed to conduct the strip search in private, and one of the officers used excessive and gratuitous violence in carrying out the search.[48]

The Ottawa Police Service records when a strip search occurs and the race of an individual who comes in contact with the police. It does not provide any data in relation to when and under what circumstances strip searches are conducted, nor does it have a policy on collection of race data.[49] The Ottawa Police Service is currently engaged in a two-year project where officers will be required by their own observation to record the race of a driver at all traffic infraction stops. The data collection process to date does not extend to any other stop.[50]

D. Peel Region

The Peel Regional Police provided three directives: general procedure for search of persons, strip search of transsexual and intersexual persons, and general procedure concerning young persons. The general procedure relating to search of persons was re-evaluated in September 2013 and adopts many of the *Golden* principles articulated by the Supreme Court of

---

[45] Letter from Alan Cardinal, SPVM Lawyer, to Brady Donahue, LEAP Fellow (7 February 2013).
[46] Ottawa Police Service, *Search of Persons Policy* (2010) [unpublished].
[47] *Ibid* at 1.
[48] *R v McGuffie*, 2013 ONSC 2097 at paras 22, 45, 107 WCB (2d) 290.
[49] Letter from Carol Brunet, Freedom of Information Analyst, to Brady Donohue, LEAP Fellow (13 March 2013).
[50] *Traffic Stop Race Data Collection Project*, online: Ottawa Police Services <www.ottawapolice.ca/en/news-and-community/Traffic-Stop-Race-Data-Collection-ProjectTSRDCP.asp>.

Canada.[51] It does not address what constitutes permissible force in conducting a strip search. The policy is progressive in that it includes special provisions for searching Sikhs and Muslims.

The policy does not define a strip search, but instructs officers to always conduct a frisk search before a strip search. Officers are required to consult with the Officer in Charge to determine if a strip search is reasonable, keeping in mind that a strip search may not be conducted as a matter of routine policy.[52] Officers are required to record the search in their notebooks. The search is also recorded using Peel Regional Police Form #166 and by the Officer in Charge.[53] Peel does not aggregate when and under what circumstances a strip search is conducted, nor does it have a policy on data collection related to race.[54]

E. Toronto

The Toronto Police Service policy and procedures on strip searches was accessed through the Police Accountability Coalition; the policy was posted online in November 2011. The policy begins with an acknowledgment of the *Golden* decision and adopts its principles. The policy provides guidance on risk factors for officers contemplating a Level 3, which is a strip search. In considering the reasonableness of a search, officers consider: the history of the person, any items already located on the person during a Level 1 or Level 2 search, the demeanour or mental state of the individual, the risk to the individual, the police, or others associated with not performing a Level 3 search, and the potential that the person will come into contact with other detainees and hand off contraband, weapons, and the like to another prisoner. The policy also provides that strip searches should not be conducted in the field, and if they are, the onus is on the officer to show why a search in the field was necessary. The preservation of evidence is not sufficient to warrant a strip search according to the policy.[55]

The Toronto Police Service has procedurally adopted the *Golden* principles, but the policy is deficient as it fails to highlight that a frisk search will be sufficient for ensuring officer safety. Strip searches are recorded in the officer's notebook.

F. Vancouver

The search policy of the Vancouver Police Department exists within a policy on prisoners and jail operations. The policy was last updated in 2010 and defines a strip search as "[a] thorough search and examination of a person's clothing and body. This will include the removal of some or all of the clothing of a person so as to permit a visual inspection of all areas of a person's body."[56] The Vancouver Police Department procedurally accepts many of the *Golden* principles. However, it does not give a prisoner the opportunity to remove any contraband themselves. It does not provide guidance in relation to the reasonableness of conducting a search; it only states that the search should be reasonable. Officers of the Vancouver Police Department

---

[51] Peel Regional Police*, Strip Search Policy* (2013), parts H(a)-(m).
[52] *Ibid*, parts H(1)(a)-(b).
[53] *Ibid*, parts H(2)-(3).
[54] Letter from Cst D Carrier, Coordinator of Information and Privacy, to Brady Donohue, LEAP Fellow (13 February 2013).
[55] "Toronto Police Accountability Bulletin No. 64, on Strip Searches" (21 November 2011), online: Toronto Police Accountability Coalition <www.tpac.ca/show_bulletin.cfm?id=153>.
[56] *Regulations and Procedures Manual* (2010), c 1.12.1(v), online: Vancouver Police Department <vancouver.ca/police/assets/pdf/manuals/vpd-manual-regulations-procedures.pdf>.

are not given guidance on how a strip search should be recorded. The policy makes special provisions for individuals who identify as transgender. The Vancouver Police Department does not collect or aggregate data on strip searches or race.[57]

The placement of the Vancouver Police Department policy within a policy on jail procedures implies that strip searches will only be conducted against prisoners. The policy also states that strip searches can be conducted in the field to preserve evidence or for officer safety. The *Golden* principles hold that strip searches in the field are presumptively unreasonable.[58] The policy stipulates that officers "must be able to clearly articulate why a strip search was required in each particular instance."[59] It is not sufficient to say that strip searches can be conducted to preserve evidence and find weapons; it should be clear to officers and outside readers that strip searches in the field should be a last resort. Further, the definition of a strip search should be amended to include the displacement of clothing, and not simply the removal of clothing.

G. Windsor

The Windsor Police Service provided two policies: *Detention Centre Operational Policies and Procedures*, and *Search of Persons*. Both policies were last reviewed on July 9, 2012. The *Search of Persons* policy begins with the rationale that searches must be conducted lawfully, conducted in an appropriate manner, and justified in all circumstances.[60] The policy requires that officers consider two questions before proceeding with a search. Does the accused have a reasonable expectation of privacy? And, if so, will the search by the police be conducted reasonably?[61]

The *Search of Persons* policy defines a strip search as the removal of clothing. This is inconsistent with the *Golden* principle that includes the removal or displacement of clothing in the definition of strip search.[62] The policy satisfies the requirement that a strip search be conducted reasonably, but offers officers no further insight as to when a frisk search will suffice. The policy does not reflect current changes in case law regarding those who identify as transgender. Further, the *Golden* decision was decisive in prohibiting strip searches as a matter of routine; the Windsor Police Service policy fails to articulate this point. It is surprising that the policy remains deficient, given that in 2011, Mayor Eddie Francis promised a review of the strip search policy after four strip searches were held in violation of *Golden* by Justice Renee Pomerance of the Superior Court.[63]

In *R v Muller,* the case prompting Mayor Francis' remarks, the facts support the assertion that the Windsor Police Service continues to struggle with operationalizing the principles espoused in *Golden*. In September 2009, the Windsor Police Service executed a drug warrant, and found four people, upon entering the apartment.[64] A fifth person, the suspect, was arrested outside the building.[65] All five were arrested, detained, and strip searched.[66] Justice Pomerance

---

[57] Letter from Civilian Analyst Information and Privacy Unit, to Brady Donohue, LEAP Fellow (6 March 2013).
[58] *Golden*, *supra* note 4 at para 105.
[59] *Supra* note 56 at c 1.12.1(v).
[60] Windsor Police Service, *Search of Persons* (9 July 2012) at Directive p I [unpublished].
[61] *Ibid* at Directive p II(c).
[62] *Golden*, *supra* note 4 at para 47.
[63] Craig Pearson, "Francis Promises Strip Search Review", *The Windsor Star* (18 August 2011), online: Canada.com < www2.canada.com/windsorstar/news/story.html?id=d5b55e30-d8c5-4664-a69c-398bfb4719fc>.
[64] *R v Muller*, 2011 ONSC 4892 at paras 2-3, 276 CCC (3d) 3971.
[65] *Ibid* at paras 13-17.

held the strip searches of the four individuals found in the apartment building unlawful; in doing so, the court expressed concern that the *Charter* violations "represent systemic practices that are unlawful and unconstitutional."[67] However, because the strip search of the accused, carried out on different grounds and by a different officer, was deemed constitutional, the application to exclude evidence under section 24(2) of the *Charter* was dismissed.[68]

Finally, the Windsor Police Service does not gather statistics on strip searches or race. The race of an individual is recorded when a report is generated, but statistics on race are not compiled. Windsor also lacks a policy or procedure on the collection of data on race.[69]

H. Winnipeg

The Winnipeg Police Services policy was reviewed in January 2013 and adopts all the *Golden* principles. Yet, the Winnipeg Police Services policy is deficient in relation to the first *Golden* principle: the policy does not acknowledge the humiliating nature of a strip search, nor does it define a strip search to include the displacement of clothing.[70] The policy includes many of the *Golden* provisions, but does not include a discussion of the amount of force to be used.[71] Further, the policy does not define reasonable grounds, nor does it warn that strip searches cannot be conducted as a matter of routine. The policy does not include special provisions on how to strip search individuals who identify as transgender,[72] and officers are only required to record a "narrative" that outlines the reason for and result of the search.[73]

On November 11, 2012, Devon Clunnis, the Chief of Police, sent out a routine order entitled "Main Street Project" where he reminded officers of the *Golden* principles, specifically that police require reasonable and probable grounds to carry out a strip search. The impetus of the memorandum appeared to be related to strip searching intoxicated persons. The Chief reminded officers to be familiar with the *Golden* decision, and the difference between arrest and detention.[74] A possible systemic problem can be inferred from this memorandum: impaired drivers held in custody because they are too intoxicated are disproportionately strip searched.

I. General Observations

The first standard applied to the policies questioned the sufficiency of the definition of a strip search. Ottawa, Peel Region, Vancouver, Windsor, and Winnipeg either lacked or had incomplete definitions of strip searches. This is important because it begs the question: are officers given the opportunity to properly understand what constitutes a strip search? The following series of cases involving women, who were required to remove their bras in the presence of male officers, demonstrates a lack of understanding or deliberate ignorance of the nature of a strip search.

---

[66] *Ibid* at para 3.
[67] *Ibid* at para 6.
[68] *Ibid*.
[69] Letter from Shelley Gray, Information and Privacy Unit, to Brady Donohue, LEAP Fellow (21 February 2013).
[70] Winnipeg Police Services, *Search Policy* (2013), part 2(d) [unpublished].
[71] *Ibid*, part 7(a).
[72] *Ibid*, parts 2(f)-(g)
[73] *Ibid*, part 7(7).
[74] Memorandum from Devon Clunnis, Chief of Police WPS (11 November 2012).

R v Lee, a case heard by the Ontario Superior Court, involved the arrest and detention of Sang Eua Lee for impaired driving. At the police station, she was required to remove her bra in the presence of a male officer. At trial, the officer testified that he had been an officer for twenty-eight years, and that asking women to remove their bra was standard operating procedure in York Region. The judge ordered a new trial, and added that the systemic nature of the problem should be given consideration in any section 24(1) *Charter* analysis.[75]

Issues like this also exist in jurisdictions not examined in this paper. In *R v PFG,* a female Aboriginal youth was charged with public intoxication. The arresting officer asked her to remove her bra. At trial, the officer testified that this was the standard operating procedure of the Royal Canadian Mounted Police for anyone lodged in a cell. The trial judge, interpreting the search as a strip search, held the search violated the *Golden* principles, even though the officers were not searching for weapons or evidence.[76]

More recently, in *R v Deschambault*, a woman who was arrested for impaired driving was forced to remove her bra at the police detachment. When she refused, her bra was forcefully removed. As articulated in Justice Tompkins' decision:

> Constable Crocker testified that, while not policy, surrender of bras is standard operating procedure. Every woman placed in cells is required to remove her bra. The officers gave three reasons for this standard procedure:
>
> 1. The Detainee's safety: A woman might use the bra itself to commit suicide or otherwise harm herself or, if the bra is underwired, she might remove the wires and use them to harm herself. This requirement parallels, one officer testified, the requirement that people held in cells surrender their belts and shoelaces.
> 2. Weapons: The wire in an underwired bra might be used as a weapon against others or the woman might have weapons concealed in her bra.
> 3. Contraband: Contraband might be concealed in the bra.[77]

Justice Tompkins classified the search as a strip search and encouraged the police to take a fresh look at their policy, as it failed to meet the requirements opined in *Golden*.[78]

The second standard applied to the policies asked if police departments have incorporated the *Golden* principles into their policies. Ottawa, Peel, Vancouver, and Winnipeg were missing one or more of the *Golden* principles. This is an unfortunate omission, because the *Golden* principles ensure that a search is conducted in a reasonable manner. Policies should, at a minimum, reflect these principles.[79] Many of the policies adopt the Supreme Court of Canada's ruling in *Golden* verbatim. The problem is that the *Golden* principles are rhetorical questions, not answers. To include the question without the answer is counterintuitive. For example, *Golden* asks what the minimum force necessary to conduct a strip search is. Most policies include this verbatim, but it leaves the reader wondering what the minimum force to be used in conducting a strip search actually is. Is it less or more than another type of search? When is it appropriate? When is it unreasonable? To be effective, *Golden* principles must be more than procedural observations.

---

[75] *R v Lee*, 2013 ONSC 1000 at para 47, 286 CRR (2d) 160. See also *R v Bouchard*, 2011 ONCJ 610, 250 CRR (2d) 359 (the accused was asked to remove her bra and the arresting officer testified that this is standard operating procedure. The trial judge excluded the evidence).
[76] *R v PFG*, 2005 BCPC 187 at paras 31–32, [2005] BCWLD 4814.
[77] *R v Deschambault*, 2013 SKPC 112 at para 58, 288 WCB (2d) 138.
[78] *Ibid* at para 76.
[79] *Golden*, *supra* note 4.

The third standard applied to the policies inquired if guidance is provided as to when and under what circumstance a strip search can be conducted. It is inadequate to simply state that strip searches can be conducted incident to lawful arrest, if the police officer has reasonable grounds. An important proviso in the *Golden* decision is that strip searches cannot be conducted as a matter of routine. These instructions should be included in all policies. Windsor lacks them entirely. Without providing a checklist of risk factors—which only the Toronto Police Service policy does—policies can lack transparency.

Yet, even checklists can be deficient and result in unreasonable searches, if not fully compliant with the *Golden* principles. As highlighted by Justice Cole in *R v SM*, the Toronto Police Service's checklist and policy fails to articulate that a detainee must not be completely naked when conducting a search.[80] In *R v SM,* a youth was strip searched naked. Justice Cole held that the search constituted egregious conduct and ordered a stay of proceedings. Thus, if the checklist does not comply with the *Golden* principles in their entirety, following a checklist can still render a search unreasonable.[81]

In addition, the court in *Golden* was explicit that a frisk search would often be sufficient to find weapons or contraband, yet this is rarely acknowledged. Combined with a lack of understanding of reasonable grounds for strip searching, this could facilitate a number of unlawful searches.

Special Constable Melanie Morris, one of the officers involved in *Bonds*, explained the impact that a lack of guidance has on police services.[82] Morris testified that officers are often left to their own devices and that the policies do not adequately address what to do when a woman needs to be searched, but no female officer is available to do so.[83] The policies also do not capture what to do in the circumstance of an uncooperative or belligerent person.[84] Her testimony is indicative of a greater problem: officers are still unsure of when and under what circumstances a strip search is appropriate. By omission or deliberate action, they are left to their own devices.[85] Evidence in other jurisdictions, including the United Kingdom, supports the notion that problems continue in the interpretation of reasonable grounds by police officers.[86]

The fourth standard analyzed the extent the policies are in tune with judicial reasoning, beyond the *Golden* decision. Notably, many of the policies have addressed how to conduct a strip search for individuals who identify as transgender.[87] However, the way standards established by the courts are operationalized continue to violate *Golden*. The following impaired driving cases elucidate this point.

In *R v McKay*, a sixty-one-year-old retired teacher was arrested for impaired driving, among other things.[88] She was brought back to the police detachment where it was decided that she would be held for a show cause hearing. As a result, she was strip searched.[89] Not satisfied

---

[80] 2013 ONCJ 219 at para 32, 281 CRR (2d) 240.
[81] *Ibid* at para 49.
[82] Megan Gillis, "Ottawa Strip Search Policy Does Not Cover Violent Prisoners: Officer", *Sun News* (2 October 2012), online: Sun News Network <www.sunnewsnetwork.ca/sunnews/canada/archives/2012/10/20121002-150425.html>.
[83] *Ibid.*
[84] *Ibid*.
[85] *Ibid*.
[86] Ben Bowling & Coretta Phillips, "Disproportionate and Discriminatory: Reviewing the Evidence of Police Strip and Search" (2007) 70:6 Mod L Rev 936 at 938.
[87] *Forrester*, *supra* note 34 at para 4.
[88] 2013 ONCJ 298, 107 WCB (2d) 17.
[89] *Ibid* at para 33.

that the police had reason to hold Ms. McKay in the first place, Justice Greene went on to find that the strip search was conducted as a matter of routine policy, stating that "[t]he police were required to consider the personal circumstances [of the accused]".[90] In failing to do this, the police acted as a matter of routine policy. Justice Greene held that a stay of proceedings was the appropriate remedy.[91] He articulated frustration that more than ten years after the *Golden* decision, police departments are still conducting strip searches as a matter of routine:

> Given the obvious emotionally damaging impact of strip searches, it is an affront to the administration of justice when the members of the system hold such cavalier attitudes about strip searches thereby exposing detainees to unnecessary intrusions on their privacy. As noted in *Golden* it is important to prevent such invasive searches before they even occur (at paragraph 89). In my view, the police conduct in the case at bar does call into question the integrity of the justice system and a remedy of some weight is necessary.[92]

Similar sentiments have reverberated in other decisions. In *R v Auger,* the accused was arrested for impaired driving and brought back to the police station, where the officers conducted a strip search.[93] Similar facts in the Ontario case *R v Manuel* resulted in a stay of proceedings, after the accused was arrested for impaired driving and strip searched because he was staying in jail overnight.[94] Justice LeRoy found that the accused was arbitrarily detained and illegally strip searched.[95] While these cases were adjudicated in Edmonton and London respectively, cases decided in the applicable jurisdictions of this paper emphasize this point.

In *Carrion-Munoz,* the accused was charged with impaired driving.[96] She was strip searched at the police station on the basis that she would be held in a cell adjacent to other prisoners. Staff Sergeant Ruth, the Officer in Charge, was cross-examined on when a strip search could be conducted. She testified that the policy was not overly helpful and that the courts did not provide clear direction on the issue.[97] The trial judge held that the strip search was unreasonable, and that the *Charter* violation should be a mitigating factor at sentencing.

In *R v McGee,* Justice Grossman ordered a stay of proceedings.[98] The accused was arrested for impaired driving and strip searched. When Crown counsel asked the arresting officer why he conducted a strip search, he replied, "in my experience as not only a police officer, but also a correctional officer at one point, whenever a person is entering a facility and going to be housed with—by themselves or with other people in a cell scenario they're to be completely searched."[99] The trial judge held the arresting officer did not have reasonable and probable grounds to conduct the strip search, and this violated the accused's section 8 rights.[100] A stay of proceedings was also ordered in *R v Mok*. The accused was arrested for impaired driving and her bathroom activities were monitored. The trial judge relied on *Golden* and ordered a stay of proceedings.[101]

---

[90] *Ibid* at para 74.
[91] *Ibid* at paras 74, 86.
[92] *Ibid* at para 85.
[93] 2012 ABPC 100 at paras 3, 5, 104 WCB (2d) 934.
[94] 2012 ONCJ 392, 102 WCB (2d) 378.
[95] *Ibid* at para 18.
[96] *Supra* note 40.
[97] *Ibid* at para 37.
[98] 2012 ONCJ 63, 252 CRR (2d) 355 [*McGee*].
[99] *Ibid* at para 71.
[100] *Ibid* at para 100.
[101] *R v Mok*, 2012 ONCJ 291, 258 CRR (2d) 232.

In *R v Melo,* the accused was arrested for impaired driving and strip searched.[102] The officer who carried out the search admitted she was aware of the Toronto Police Service policy, which requires reasonable grounds for a search. Despite the requirement, she was concerned that prisoners could be brought in from other divisions at any time, since 32 Division is a central lock up. As she stated, "[i]t's my personal policy. It's an unwritten policy. For me personally I search anybody to be lodged."[103] Justice Pringle held that: "[i]t's obvious to me that the strip search in this case had nothing to do with any grounds or concerns related to Mr. Melo. Rather the strip search was simply a matter of routine procedure for the officers."[104] As a result, the trial judge sentenced the accused to a fine of one dollar.

In *R v Nguyen,* Justice Green was critical of the arresting officer who arrested Mr. Nguyen for impaired driving.[105] Justice Green stated that the officer's reasons were:

> [I]nimical to the letter and spirit of *Golden* which, at minimum, commands a careful assessment of all the relevant factors in light of the intrusive invasions of privacy and personal dignity inevitably engaged by a strip search…the decision to strip search [was a] mechanical decision: the possibility of hidden drugs, he reasoned, requires a strip search. This decision—or, perhaps more importantly, the facile manner in which it was reached—complied with neither TPS policy nor constitutional imperatives. It reflected a myopic focus on a single factor that for Male appears to have been dispositive. This is not the case-by-case, particular-circumstances-of-the-case analysis directed by the Supreme Court. Nor is it properly responsive to the Court's caution, as earlier quoted, that, "the mere possibility that an individual may be concealing evidence or weapons upon his person is not sufficient to justify a strip search.[106]

An egregious section 8 violation occurred in *R v A(Z)*.[107] The accused, a youth, was arrested for failing to provide a breath sample. More than an hour after arriving at the station, the youth was stripped naked.[108] In the course of his interaction with police, AZ was charged with assaulting a police officer. When asked about how the experience made him feel, AZ stated: "I'm strip searched like that's—do you know how ashamed I was—like I never showed any of my private parts to a girl and I have to show it to an officer."[109] Justice Cohen stayed the charges. He found that the police did not have reasonable grounds to conduct a strip search, and the search was not carried out in a reasonable manner. In his reasons, Justice Cohen expressed the view that the strip search was carried out as a matter of routine policy.[110]

The case law suggests that systemic disregard or ignorance of the *Golden* principles persists. In all of these cases, judges were troubled by the apparent routine nature of a strip search. Given the number of stayed proceedings in one year, a revision of the policy by every Canadian police department may be necessary to remedy the confusion surrounding how to manage intoxicated persons. The court has overwhelmingly rejected strip searches on the basis that a person may come in contact with other prisoners. Courts are, instead, in favour of a case-by-case analysis of the situation. So far, this is rarely reflected in the policies.

---

[102] 2012 ONCJ 765, 104 WCB (2d) 726.
[103] *Ibid* at para 25.
[104] *Ibid* at para 57.
[105] 2012 ONCJ 624, [2012] OJ No 4784.
[106] *Ibid* at para 38.
[107] 2012 ONCJ 541, 266 CRR (2d) 152 [*A(Z)*].
[108] *Ibid* at para 30.
[109] *Ibid*.
[110] *Ibid* at para 71.

A(Z) also elucidates the issues found in the fifth, and final, point of analysis conducted in reviewing the policies of eight Canadian police services: how strip searches are recorded. In light of the *Golden* decision, this process should be transparent. For a number of reasons, including inadequate note taking, the process for conducting a strip search remains unclear. In *A(Z)* the trial judge made specific mention of the officer's failure to take adequate notes.[111] Adequate records serve a dual purpose: to refresh an officer's memory if he or she ever has to testify, and to increase accountability. Many of the policies do not require officers keep a record of the search beyond their notebooks.

Insufficient records resulted in a number of successful *Charter* applications. In *R v Smith,* the trial judge stayed the charges on the basis that the police did not have reasonable grounds for a strip search, and the search was not conducted in a reasonable manner.[112] The trial judge was shocked by the lack of adequate records, and considered this to be a factor in her decision to stay the charges.[113] In the same year, Justice Rutherford stayed the impaired driving charges against an accused. While the Officer in Charge testified that he had authorized the search, he and his colleagues did not have any record of the event. The trial judge reasoned that a lack of note taking was indicative of a lackadaisical approach towards strip search practices. Justice Rutherford was particularly troubled by the glaring evidence that the search was authorized and carried out in a routine manner.[114]

This section explored the extent police departments have operationalized the *Golden* principles in Calgary, Montreal, Ottawa, Peel Region, Toronto, Vancouver, Windsor, and Winnipeg. The police policies in these jurisdictions were analyzed from five perspectives: how strip searches are defined, inclusion of the eleven *Golden* principles, guidance on how and when strip searches can be conducted, responsiveness to post-*Golden* jurisprudence, and methods of recording strip searches. The police policies and recent case law demonstrate a continued lack of understanding, or deliberate ignorance, of the *Golden* principles.

PART III: ISOLATED INCIDENT OR SYSTEMIC ISSUE?

The lack of data about when and under what circumstances a strip search should be conducted is a barrier to quantifying a strip search analysis post-*Golden*. Existing policies, in conjunction with academic writing and case law on the topic, indicate that systemic issues persist. As late as 2011, more than sixty percent of arrests in Toronto led to a strip search.[115] Other figures show that in 2010, eighty-five people were strip searched a day, an increase from 2009. Of those, only a third resulted in the discovery of evidence.[116] Professor Kent Roach, a leading scholar in criminal law, argues that police need clearer guidelines as to when and under what circumstances a strip search can be conducted.[117]

---

[111] *Ibid* at para 43.
[112] 2010 ONCJ 137 at para 22, 37, 87 WCB (2d) 489.
[113] *Ibid* at para 29.
[114] *Mesh*, *supra* note 40 at para 30.
[115] Prithi Yelaja, "85 Police Strip Searches a Day 'Too High'", *CBC News* (19 August 2011), online: CBC/Radio Canada <www.cbc.ca/news/canada/85-police-strip-searches-a-day-too-high-1.1001576>.
[116] *Ibid.*
[117] *Ibid*.

The quantitative research is clear: the *Golden* principles are inconsistently applied.[118] Without a benchmark, it is hard to measure the systemic nature of a strip search, but without an accurate record of the number of strip searches that are conducted, a benchmark is nearly impossible.

A. Detained with Others: The New Routine

A number of cases post-*Golden* reflect concern that strip searches are still conducted as a matter of routine. In *R v Wilson*, the accused was arrested for impaired driving.[119] The accused could have been released on a promise to appear in court, but because no one could pick him up, he was detained at the station for a few hours. At trial, the arresting officer testified that it was standard procedure to strip search anyone lodged in a cell.[120] In response, the trial judge excluded breathalyser evidence, but did not stop there. Troubled by the fact that without the officer's spontaneous admission at trial, the court would not have been aware of the complete disregard of the *Golden* principles, Justice Baldwin recommended that the Halton Crown Attorney's Office screen police briefs related to strip searches, and that a copy of his reasons be sent to the Chief of Police.[121]

The public hearings related to the Toronto G20 Summit further demonstrate this point. In their report on the topic, the CCLA asserts that the scale and systemic nature of the seemingly illegal searches suggest a lack of constitutional protection in downtown Toronto.[122] According to the report, this contributed to the confrontational atmosphere between police and demonstrators.[123]

The impetus of the problem is hard to discern: is it deliberate disregard of the policies or a lack of clarity in the policies themselves?[124] It may be that *Golden* is still beholden to police discretion.[125] The issue could also be that the judiciary is an ineffective venue for establishing police accountability, and that it is Parliament, not the courts, who are better placed to ensure effective regulation of police powers.[126]

At the same time, the Supreme Court of Canada's involvement in outlining the source, scope, and limits of police authority increases the potential for dialogue between Parliament and

---

[118] David M Tanovich, "*Bonds:* Gendered and Racialized Violence, Strip Searches, Sexual Assault and Abuse of Prosecutorial Power" (2011) 79 Criminal Reports (6th) 132 at 139 [Tanovich, "*Bonds*"].
[119] 2006 ONCJ 434, 148 CRR (2d) 33.
[120] *Ibid* at para 22.
[121] *Ibid* at paras 56-59. See also *R v Drury*, 2004 BCPC 188 at para 72, [2004] BCJ No 1317 (stay ordered); *R v Padda*, 6 Admin LR (4th) 38, 64 WCB (2d) 550 (ONCJ); *McGee, supra* note 98 (stay); *R v Crocker*, 2011 BCSC 1361, 97 WCB (2d) 166; *R v Sarachandran* 98 WCB (2d) 505 at para 23, [2011] OJ No 6144; *R v Chowdhury*, 2009 ONCJ 478 at para 7, 85 WCB (2d) 16.
[122] National Union of Public and General Employees & Canadian Civil Liberties Association, *Breach of the Peace: G20 Summit: Accountability in Policing and Governance* (Ottawa: NUPGE & CCLA, 2011) at 30.
[123] *Ibid*.
[124] Craig B Futterman, Mellissa Mather & Melanie Miles, "The Use of Statistical Evidence to Address Police Supervisory and Disciplinary Practices: The Chicago Police Department a Broken System" (2008) 1 DePaul J Social Justice 251.
[125] Debra Livingston, "Police Discretion and the Quality of Life in Public Places: Courts, Communities and the New Policing" (1997) 97 Colum L Rev 551 at 592.
[126] James Stribopoulos, "In *Search* of Dialogue: The Supreme Court, Police Powers and the *Charter*" (2005) 31 Queen's LJ 1.

the Bench. This ensures that the larger purpose of the *Charter*—to safeguard individuals from abuses of state power—is actualized.[127]

The judiciary continues to act as an accountability mechanism through section 24 of the *Charter*. For example, the Supreme Court of Canada decision in *Ward v Vancouver* (*City)* has opened the door for civil litigation of *Charter* violations.[128] The extent that this promotes police accountability remains to be seen. Ultimately, a warrant requirement, as proposed by the CCLA in *Golden,* would address the concerns outlined above. First, it would place an appropriate limit on police discretion, by making a strip search *prima facie* unreasonable if conducted without a warrant. Second, Parliament's inclusion in the process would increase accountability.

B. Remedying Policies Themselves: Increasing Accountability

Other steps include remedying the shortcomings in the policies themselves, while also enhancing accountability using the short list of best practices proposed by Professor Samuel Walker, a police accountability expert.[129] These include:

> (1) A comprehensive use of force reporting system;
> (2) An open and accessible citizen complaint system;
> (3) An early intervention or warning system to identify potential problem officers; and,
> (4) Data collection.[130]

The most crucial first step towards accountability in Canadian police services is an emphasis on data collection, as this paper has found data collection to be an overwhelming deficiency in the policies. Courts across Canada have agreed that the lack of note taking on this issue is particularly troubling.[131]

Data collection is necessary because it will help identify the extent racialized communities in Canada are disproportionately strip searched.[132] *Golden* was not simply a case about strip searches, but one of the few cases to address the disproportionate impact of police misconduct on marginalized segments of society.[133] Reports, academic articles,[134] and *Bonds*[135] collectively indicate this is a persistent problem. Thus, improving data collection is not simply about upholding section 8 *Charter* rights, but ensuring equal treatment before the law.

---

[127] *Ibid* at 6.
[128] 2010 SCC 27, [2010] 2 SCR 28.
[129] Samuel Walker, *The New World of Police Accountability* (California: Sage Publications, 2005) at 6-7.
[130] *Ibid* at 5.
[131] See e.g. *A(Z) supra* note 107.
[132] Tanovich, "*Bonds*", *supra* note 118.
[133] David Tanovich, "Ignoring the *Golden* Principle of Charter Interpretation" (2008) 42 SCLR (2d) 441.
[134] April J Walker, "Racial Profiling –Separate and Unequal Keeping the Minorities In Line- The Role of Law Enforcement in America" (September 2009), online: Selected Works <www.works.bepress.com/april_walker> ("current legal doctrine seems to condone police brutality and makes individual acts appear isolated, aberration, and acceptable rather than part of a systemic pattern of official violence" at 8); Louise Westmarland, "Blowing the Whistle On Police Violence" (2001) 41 Brit J Crim 523; Quebec, Commission des Droits de la Personne et des Droits de la Jeunesse, *Racial Profiling and Systemic Discrimination of Racialized Youth* (Quebec: CDPDJ, 2011) ("I grew up in Montreal. I don't shout racism all the time. But it happens. I tell my children to be careful, and to be polite to the police" at 3); Peter Kraska & Victoria E Kappeler, "To Serve and Pursue: Exploring Police Sexual Violence Against Women" (1995) 12 Justice Q 85.
[135] Tanovich*, "Bonds", supra* note 118.

One of the few quantitative studies dealing with police misconduct and race was conducted by the University of Chicago Law School. According to the study, Chicago Police Department data suggests that officers focus on particular victims within low-income African-American and Latino communities.[136] The study exposed deliberate indifference on the part of the Chicago Police Department to police misconduct. Improved data collection by Canadian police services will increase transparency, and protect against unreasonable and illegal strip searches.

A lack of effective data prevents organizations from identifying problems. When problems are ascertained, police services across Canada will be able to directly address these issues. As police services become more accountable for strip searches, the result will be improved compliance with the *Golden* principles. While the judiciary has played—and continues to play—an important role in ensuring *Charter* compliance of strip searches, police services must also recognize their role.

CONCLUSION

The *Golden* decision has not been realized. *Bonds* and *Darteh* raise two concerns: current strip search polices are ineffective at operationalizing *Golden*, and strip searches continue to disproportionally impact women and racialized communities.[137] For systemic issues to be remedied, it is imperative that illegal strip searches be viewed not simply as the conduct of "rotten apples" but as a symptom of a "rotten barrel".[138]

The landmark decision in *Golden* provided clear guidelines and limitations on the common law doctrine of search incident to arrest.[139] Judicial oversight succeeded in encouraging a more professional and accountable police force, as evidenced by policies that attempt to codify the decision. The judiciary remains active in a number of ways, but effective accountability requires a holistic approach, including organizational change by police services across Canada. Illegal strip searches undermine the integrity of our judicial system. Effective police accountability is not simply a legal issue, but an integral measure of a healthy democracy.

---

[136] Futterman, Mather & Miles, *supra* note 124 at 283.
[137] Tanovich*, "Bonds", supra* note 118.
[138] Walker, *supra* note 129 at 3-4.
[139] Eric V Gottardi, "The *Golden* Rules: Raising the Bar Regarding Strip Searches Incident to Arrest" (2002) 47 Criminal Reports (5th) 48.