

SiRT

**SERIOUS INCIDENT
RESPONSE TEAM**

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Director

Police Use Of Force:

Having the power and
choosing to use it: Three
Scenarios.

Or:

- The meanderings of an old defence counsel / prosecutor / policy counsel / SiRT Director about “Some of the things I have seen!”

Or:

- In other words:
- Blah
- Blah
- Blah
- Blah

Sir Robert Peel:

- *‘Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that **the police are the public and the public are the police**; the police being only members of the public who are paid to give full time attention to duties which are incumbent on every citizen in the interests of community welfare and existence’*

Sir Robert Peel:

- *‘The degree of cooperation of the public that can be secured diminishes proportionately to the necessity of the use of physical force’.*
- *‘Police use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice and warning is found to be insufficient’*

Insp. Chris Butler, Calgary Police Service:

- In paper delivered at the 2009 CACOLE Conference:
- The unfortunate reality is that an ever-increasing number of citizens that police officers are brought into contact with are under the influence of central nervous system drugs or are experiencing an emotional disorder which oftentimes precludes the possibility of a peaceable outcome. The concept of utilizing 'persuasion, advice and warning' as a deterrence can only be attained when the subject who's behaviour the officer is attempting to influence is **capable of rationalizing and understanding the consequences of their actions.**

Cluett v. The Queen (1985) (S.C.C.)

- *Police officers are authorized to use such force as is reasonable, proper and necessary to carry out their duties, providing that no wanton or unnecessary violence is imposed. What is reasonable and proper in the particular circumstance, and in the particular case, will depend upon all the circumstances. **It is not possible to lay down any hard and fast rule, except the test of reasonableness.***

The Questions:

- How does an officer reconcile **the right to use force** as the law provides, for safety and to carry out duties,
- With
- **The need to use force**, recognizing the need to maintain the relationship with the public?

The Questions:

- AND:
- Should disciplinary authorities act in cases where other steps may have been more appropriate even if the action can be justified at law?

#1: Strip Searches

Basic Principles:

- Search Incident to arrest is permissible
- Allows police to search for reasons of officer safety and to secure evidence on the person

Strip Searches

- This area of the law well understood
- In 2001 S.C.C. set out the law for Strip Searches: R. v. Golden

Strip Searches

- The “Golden Rule”:
 1. Arrest must be lawful
 2. Search must be “incident”,
or related to the arrest

Strip Searches

3. Must be reasonable and probable grounds to conduct search.
4. Search must be conducted reasonably, ie: at station, same sex searcher, in privacy.

Strip Searches

- Many forces have adopted policies that flow from this.
- What has impact been on practice?

Strip Searches

- Nova Scotia:
 - HRP: Infrequently used
 - RCMP: Infrequently used
- Toronto: 2011: 44% of those arrested

Strip Searches

- Paper by Natasha Meier, Schulich School of Law:
- Quotes Mike McCormack of TPA as saying 44% is a “minority of cases”

Strip Searches

- SCC in Golden states that goal of law is avoid unnecessary searches.
- Very important in this area given great intrusiveness of searches.

The Issue

- The Issue relates to Police views in the Use of Force
- How account for stark differences?
- What discussions need to occur?

The Issue

- Bottom line:
- A practice that does not align with common practice and meet public expectation results in public mistrust and loss of respect.

The Issue

- Remember: The police are the public; the public are the police.

#2: “Resist Arrest”

- Two examples:
- 1) Restaurant Crowd
- 2) Staggering Student

#2: “Resist Arrest”

- Both result in:
- Resist Arrest Charges
- Court time
- Possible Records for young person
- Additional work and effort

#2: “Resist Arrest”

- Both also result in:
- Anger and disrespect
- Costs
- Spread of distrust in community

#2: “Resist Arrest”

- Is there an alternative approach?
- That avoids negative consequences
- That leads to neutral response, if not enhanced reputation for Police

#3: Mentally Affected Arrestee:

- 1) Mentally affected female
– arrest leads to broken arm

#3: Mentally Affected Arrestee:

2) Mentally Affected Person
with weapon

#3: Mentally Affected Arrestee:

- Issue: Is the person capable of rationalizing and understanding the consequences of their actions.
- Should this impact the way such people are dealt with?
- Is it time for developing a new approach in these cases?

It comes down to this:

- Use of Force is:
 - about much more than the individual case
 - Involves public confidence
 - Public cooperation

It comes down to this:

- Must be prepared to revisit these issues not just to protect public, but for success of policing.

It comes down to this:

- All oversight agencies
MUST address any systemic
issues proactively and
effectively: Commissions,
Investigative Agencies, and
Boards.

It comes down to this:

- If we can develop alternative approaches, can avoid:
- Public disrespect
- Injury or death
- Time and energy

It comes down to this:

- If we can develop alternative approaches, we can enhance:
- Public respect
- Public cooperation
- Reality that the Police are the Public, and Public are the Police

SIRT

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