

It is incongruous that we should provide detailed protection for suspects in serious criminal cases and yet happily accept that police can carry out degrading strip searches on hundreds of occasions each year at their absolute discretion in relation to trivial routine matters. Surely this must shatter a person's sense of confidence and trust in our police. These strip searches represent government-sanctioned assault on individual members of our community. These assaults are likely to affect the victims in the same way as any other victim of sexual assault based on exploitation by a greater power. I suggest too that the position of prisoners in our gaols, who are being subjected to routine and systematic strip searches, ought to be no different to the position of the prisoner to which Donaldson LJ refers.

Conclusion

In a recent article Detective Sergeant John Gibson, Victoria Police, questioned whether 'ever-increasing high expectations of police accountability ironically have a repercussion of placing public safety in jeopardy'. He went on to say, 'an argument could be put that if you are doing the right thing then you have nothing to fear. Such a contention might be right if police were free from personality conflicts from within their own ranks and free from those in the criminal world who readily make false accusations for self-serving reasons'.³

From the perspective of balancing community interests against the interests of individual community members being investigated, it is difficult to accept that the broader community interest is served by reducing the accountability of police in the manner of the new Victorian legislation. Such a contention might be right if police were free from personality conflicts, human frailty, corruption, dishonesty and criminality within their own ranks. This is not the case, and sadly never will be. Reducing police accountability has increased the likelihood that the criminal justice system will be tainted with injustices.

This significant reduction in accountability for the exercise of police powers contained in the new legislation ought to give rise to serious concern in the community. Sadly, our media, politicians, police officers and to a large extent, the general public, seem unable to acknowledge that there are serious reasons for concern.

References

1. Regulatory Impact Statements on Transport, Public Transport Corporation Regulations 1994, undated document, Department of Transport, Victoria.
2. In the 1990-91 fiscal year Victoria Police obtained 32,972 fingerprints but obtained only 44 court orders. The corresponding figures for 1991-92 were 29,100 and 63. Figures released by Victoria Police under Freedom of Information.

LEGAL STUDIES

How accountable are our police?

Consider the two articles which deal with the accountability of police in this issue. (G. Connellan: 'Power without accountability' p.203; and B. Simpson: 'And the judge wore blue' p.207).

Questions

1. Why is it important to hold police accountable for their behaviour? Why has this become an important issue in recent years?
2. Both articles give examples of how police have been given significant additional powers in recent times. What are some of the problems associated with the exercise of these powers?
3. Do certain groups in the community appear to suffer more than others when these powers are exercised? Is this fair?
4. To what extent do international legal documents such as the United Nations Convention on the Rights of the Child provide us with some means of measuring the appropriateness of laws which grant police significant powers?
5. Do the juvenile justice laws in South Australia or the recent reforms of the law in Victoria conform to such international legal rules?
6. It is often said that if you have done nothing wrong then you have nothing to fear from increased police powers. What does this assume about the way in which police perform their duties?

Discussion

Should the police have the power to punish young offenders? What are the arguments in favour of such power being granted to the police? Are they convincing? Imagine you are a police officer. What penalties would you hand out in the following cases if the South Australian legislation applied to you?

1. A 15-year-old boy paints a graffiti slogan on the wall outside

- the local railway station. The boy has a slight intellectual disability and he was encouraged to graffiti by his friends.
2. A 12-year-old girl steals a chocolate bar from the local supermarket. She had \$5 in her pocket at the time. She later used the \$5 to buy a magazine for her sick grandmother in hospital.
3. A 14-year-old boy buys cigarettes and alcohol in contravention of the law. He bought them for his own use and without his parents' knowledge.
4. A 13-year-old girl repeatedly swears at you when you attempt to arrest her boyfriend for a serious assault. You warn her to keep quiet but she persists and you decide to take more formal action.

Compare your answers with your classmates. Are there differences? Why? Are police also likely to reach different answers? How do we prevent wide disparities in the way people are treated by the police?

Essay topic

'The police must be given adequate powers to detect and prevent crime but the parallel responsibility which police have is to be accountable for the use of such powers. Without such accountability we can never be sure that these rule enforcers are themselves acting according to the rules'. Discuss.

Further research

Can you think of any other areas in recent times which have led to questions about the accountability of police with respect to the exercise of their powers? Consider those other areas in the context of the points put forward in both of the articles mentioned above. Do similar issues arise?

Brian Simpson

Brian Simpson teaches legal studies at The Flinders University of South Australia.