
Dynamic Policing And Police Discretion

One of the most notable, dynamic and often contentious components of the criminal justice system is policing. Policing has become increasingly complicated in the 21st century as officers are required to perform so many roles of counsellor, mediator, psychologist, peacekeeper and enforcer (Waby, 2016, p.50). Policing has also taken on a form of non-law enforcement where they are called upon to fill gaps in service that are the responsibilities of other government services such as social or mental health work, considering it the “jack-of-all-trades” (Waby, 2016, p.50). Police officers are required to perform any one of these roles at a moment’s notice, all while being held accountable for the decisions they make and the powers they employ while performing their duties. “Because it [would be] impossible for officers to enforce all [of the] laws all [of the] time, they are afforded the power to use discretion (Griffiths, 2019, p.105). Police discretion is widely considered a vague term that has an appropriately vague definition; it can be defined as an important factor of policing because there are no laws or regulation can recommend what an officer must do in each scenario that they are faced with (Griffiths, 2019, p.105).

Police officers have to put forth their own judgment based on all the other surrounding circumstances which include the presence of a weapon or what the aggravating or mitigating factors were (Griffiths, 2019, p.112). For example, if a police officer stops a vehicle that was speeding and finds out there is a toddler on board, the officer now has the decision to either arrest the driver and take custody of the toddler or to just let the driver go home safely with a warning involves their own judgment. Nevertheless, discretion does not mean that the officers can completely depend on their judgment; they still have to follow certain guidelines of the Canadian Charter of laws, court decision and the department put forth as well as take into consideration the geographical area (Griffiths, 2019, p.105). This paper will critically analyze the role of discretion used by police officers in the Canadian criminal justice system. It will provide an overview of the necessity of discretion in the lives of Canadian police officers, as well as its disadvantages.

There are numerous policing activities that would include an equal amount of discretionary activities. Some of these include order maintenance , crime prevention and crime control. (Griffiths, 2019, p.74). Crime control and order maintenance make up most of the routine tasks performed by officers (Griffiths, 2019, p.74). The duties can include patrolling the street to prevent offences and responding to, investigating crimes, preventing and control behaviours that disturbs the public peace and intervening in conflicts that arise between citizens (Griffiths, 2019, p.74). While performing these duties, a police officer can face numerous decisions on how to approach a situation and decide whether a crime has been committed or not and what measures are taken to restore order (Schulenberg, 2012, p.299)

Discretion depends upon a officer’s experience with various encounters which is called typification. (Schulenberg, 2012, p.299) This is a dynamic decision-making process that takes into account the officers age, years of service, education, rank, training and ethnicity (Schulenberg, 2012, p.299). Another decision-making mechanism is called recipes for action “Officers who are assigned to a fixed geographical area for an extended period of time develop an intimate knowledge of its persons and places as well as extensive contacts with community

groups, agencies, and organizations that are facilitative of police– community partnerships and the identification of and response to problems” (Griffiths, 2019, p.106). How a situation or a person is “typified” may play a significant role in the recipes for action.

An important factor of discretion is dealing with the youth, if an officer chose to pursue a trial with a minor it may have long term effect on the child as he/she become an adult (Griffiths, 2019, p.407). An officer has the ability if he/she wants to let an offence off with a simple warning, or simply charge the minor with community service (Griffiths, 2019, p.407). The results of having all police officers handling each case with no discretion would result in higher incarceration rates and further hardship on the overall criminal justice system creating further bottlenecks pursuing due process. It is with these types of good intention like the extrajudicial measures that Youth Criminal Justice Act tries to keep as many youths out of the criminal justice system as possible (online pg 407). Extrajudicial measures and sanctions involves diverting the youths out of the justice system into programs.

Another positive factor police discretion is when dealing with nationalities that have a higher representation in the criminal justice system such as Aboriginal People or Canadians of African origin. Police officers “must decide if an infraction has to be recorded as a crime or not” (Boivin & Cordeau, 2011, p.188). For example, a police officer can pardon a minor infraction such as speeding violation by letting them off with a warning. In contrast, if the car had young kids that look intoxicated the officer will likely take a complete different set up of action, investigating both car and people. For more serious crimes such as rape and murder there is guidelines and procedures that need to occur as there would be no discretion (Boiven & Cordeau, p.197)

There are numerous advantages of police discretion; one of it is the fact that it allows the officer to cater to the individual needs of people, giving them a second chance resulting in an improvement of the public perception of the police (ethicsinlawenforcement chapter 7.2) One of the greatest advantages of discretion in the life of a police officer is that it does not overwhelm the criminal justice system by the number of cases. (Manning 2010 ethicsinlaw). This includes petty crimes that can be let go of with a warning. Without the use of police discretion in such cases, there would be massive bottlenecks in courts, which would in turn slow down the wheels of the Canadian criminal justice system. In addition, there are not enough courts, judges, lawyers, police officers and other members of Canadian criminal justice system to arrest or charge every single person who commits any crime. Secondly, if the police were to follow the laws and disregard the obvious differences in each case, they will be perceived to be unfair by the society. Finally, the discretion promotes the use of their own judgments which in turn results in officers’ job satisfaction. When the officers start realizing that the way they handle a case is different from the way it should have been handled, they themselves will start losing faith in the justice system. For example, the police may be more tolerant of higher noise levels in downtown Vancouver as opposed to the same amount of noise in a suburban residential area especially if there is a school or a hospital near it. As mentioned in a recent news article in CBC News, the police officers “decide not to proceed with marijuana possession charges because of the serious repercussions it can have on a person 's future, including the ability to travel internationally, and to get work” (Julian, 2015). According to the article, the police would much rather focus on the “drug trafficking” issue in Halifax. This shows discretion because instead of clogging up the criminal justice system by arresting or fining every marijuana user, the police officers look at a broader perspective and attack the larger problem. This emphasizes the usefulness of discretion with aspect to the criminal justice system. Therefore, the use of discretion not only has advantages but is also necessary as it allows officers across Canada to

make “flexible, common-sense decisions that are based on local knowledge and their experience of what works” (McKillop & Pfeifer, 2004).

In contrast, negative effects of discretion include abuse of power, hate crime, and causes selective enforcement. As mentioned in the journal, “discretionary decision-making may provide an avenue for the introduction of police officers’ personal and cultural biases into the application of the law” (McKillop & Pfeifer, 2004). The negative aspect of having officers use their own judgment when confronted with situations is that it does not guarantee that this was the best suited and the most appropriate decision. In numerous cases, officers use methods such as “profiling” but in many cases it is not profiling but plain discrimination. This mistake may result in the officer being accused of discrimination which will make the department liable affecting people’s trust in the police department. For example, if two people are over-speeding, a thirty-one-year-old female with a child, and a nineteen-year-old boy, the officer is more likely to issue a speeding ticket to the latter; whereas the woman gets away with just a warning. In addition, discretion in policing causes police officers to be perceived as being lenient. When these officers pardon people who have violated a petty law such as over-speeding, some people still want harsh actions taken against it. Another negative aspect with the use of discretion is the use of excessive force. When confronted with a real-life situation, the police officers have a choice to use numerous approaches: officer presence, dialogue, empty hands and compliance tools, and lethal force. The constant misrepresentation of the use of excessive force by police has resulted in a negative relationship between the police and community along with it. Similarly, when an officer commits an offence when on duty, numerous cases “never make it to a public hearing” (McLean & Poisson, 2015). In those cases, the names and the behavior of the officers is rarely mentioned (McLean & Poisson, 2015). And it is left to the discretion of the chief to decide how to proceed with them. If the officer happens to be someone the chief knows, there are chances that they will be let off more leniently than what the officer deserves.