

- > HOME
- > NEWS
- > YOUR TORONTO
- > OPINION
 - Editorials
 - Commentary
 - Readers' Letters
 - Public Editor
 - Corrections
 - Editorial Cartoon
- > SPORTS
- > BUSINESS
- > ENTERTAINMENT
- > LIFE
- > AUTOS
- > PHOTOS
- > DIVERSIONS
- > CLASSIFIEDS
- > OBITUARIES

Opinion / Commentary

How to stop police from lying

Important safeguards against dishonesty and corruption in Ontario's justice system have been whittled away in recent years.

Tweet 22
 4
 reddit this!



TORONTO STAR / KEITH BEATY

Const. Juin Pinto, shown here outside a 1993 inquest, is one of four members of the Toronto Police Service who over the last month were found to have lied in court.

By: Nathan Gorham Published on Mon May 04 2015

Four times in the last month, Toronto police officers were found to have lied in court — one “constructed” evidence; another “fabricated” his grounds for arrest; others falsified notes and committed perjury; and finally, one officer lied to a Justice of Peace and then again in court. These cases do not reflect the majority of decent and honest police officers, but they are a jolting reminder that some officers are willing to lie under oath.

Although startling, four cases of dishonesty are not revelatory. Human history and experience proves that some people are dishonest. No office, oath or profession has ever been immune from the corruptibility of human nature; priests have lied, doctors have lied; business people have lied, politicians have lied, lawyers have lied, and police officers have lied.

To protect against dishonesty and corruption, important safeguards have developed in British and Canadian criminal law over the span of several centuries.

First, the open-court principle is the presumption that criminal court proceedings are open to the public. It helps ensure that justice is both done and seen to be done. It is borne of the recognition — to borrow the words of Jeremy Bentham — that “in the darkness of secrecy, sinister interest and evil in every shape have full swing ... where there is no publicity there is no justice.”

Second, the defence is given the right to cross-examine without significant constraint. The Supreme Court has referred to this right as “an indispensable ally in the search for truth.”

Third, the prosecution is required to disclose its evidence. Meaningful disclosure allows

Inside the Star



City of Mississauga says get ready to pay more if you own a 'McMansion'



Precarious work is now the new norm, United Way report says



Is Mike Babcock really the answer for the Maple Leafs?

ROLL OVER

FEEL LIKE THE EMPLOYEE OF THE MONTH EVERY WEEK

THE GROUP PLAY CAPTAIN ADVANTAGE

649 MAX

Latest Opinion Videos

A message for Princess Charlotte

a Message for Princess Charlotte

Top News

- ▶ Fewer than half of workers in GTA are in permanent, full-time jobs: report |
- ▶ Most Canadian police don't have right info on when to use force, report finds |
- ▶ Departing Toronto watchdog Crean applied to become Ontario ombudsman |
- ▶ City of Mississauga says get ready to pay more if you own a 'McMansion' |
- ▶ Mike Babcock chose to climb highest mountain with Maple Leafs: Arthur |
- ▶ Terrorist application form and other bin Laden

the defence to investigate the truthfulness and reliability of the prosecution's evidence.

These three principles help protect truth, liberty and innocence against the inevitability that some witnesses will attempt to distort and corrupt the criminal trial process. The events of last month prove it. Without disclosure, cross-examination and transparent proceedings, the dishonesty likely would not have been exposed.

Four cases of deliberate deceit in a month should be a sharp reminder that safeguards against corruption are critical tools to protect the criminal process against distortion. They should also call into question a recent practice in Ontario whereby a significant measure of the right to disclosure, the right to cross-examine and the open-court principle have been surrendered to a desire for efficiency — that is, search warrant cases involving confidential informants.

Over the last several years, a body of cases has emerged where courts accepted and relied upon secret information that came from secret meetings between an informant handler and a confidential informant. Informants — assuming that they're real people — are commonly entrenched in the criminal underworld. The handler is a police officer that "cultivates" the informant by offering money or help with criminal charges in exchange for information. After the handler makes the deal with the informant, he or she provides the resultant information to a Justice of the Peace during a private meeting to obtain a search warrant. If the police recover evidence, the warrant can then be challenged in court.

The old practice on warrant challenges was that when the police relied upon evidence from an informant, the Crown would not present that evidence to the trial judge unless the information was first disclosed to the defence. In that context, evidence was not relied upon at trial unless it was first made vulnerable to challenge and presented in open court.

Under the new practice, the judge considers and relies upon the secret information, even though the defence is only given a bald summary of the information. The summary does not allow the defence to challenge — through investigation and cross-examination — the truthfulness of the handler, the truthfulness of the informant, or the circumstances of the secret meeting between the handler and the informant.

This practice is wide open to abuse because both the handler and the informant are free to lie with impunity if they choose. The informant could frame an innocent person. The handler could fabricate a fictitious informant, lie about what the informant said, or hide matters that reflect badly on the informant's credibility and reliability.

It is unavoidable that some handlers and informants will attempt to mislead the court because they are human beings, and some human beings lie. As a result, it is only a matter of time before a secret deal made between two liars is allowed to distort the criminal trial process — that is, assuming it has not happened already. The wisdom of this practice should be reconsidered in the light of the four cases of deliberate dishonesty in the last month.

Nathan Gorham is criminal trial and appeal lawyer in Toronto, Ontario as well as an LLM candidate at the University of Toronto.

More on thestar.com



We are all to blame for Omar Khadr's mistreat...



End of an era for the Leader's Tour

documents revealed

- ▶ Cost of audit into Senate expenses expected to hit astonishing \$21M ! ☞
- ▶ Updated David Letterman signs off with plenty of laughs after 33 years ! ☞



SickKids: A big doggy lick cheers kids stuck in hospital



Toronto.com: Best Tequila Bars in T.O.



Money Makeover: Will their retirement plans



'Fear of recurrence' cited as one of cancer



A peek behind Ford's GT curtain

Editorial Board

- ▶ Meet the Star's editorial board ! ☞
- ▶ The Atkinson Principles

The Star's Public Editor

The Star's Public Editor welcomes reader comments and complaints about news and feature content in the print and online editions.

- ▶ About the Public Editor
- ▶ Recent Corrections
- ▶ Report an Error

Most Popular

▶ David Letterman's final show filled with fun ! ☞

▶ Mike Babcock chose to climb the highest mountain: Arthur ! ☞

Toronto comic Jen Grant 'blindsided' on stage by heckler ! ☞

We value respectful and thoughtful discussion. Readers are encouraged to flag comments that fail to meet the standards outlined in our [Community Code of Conduct](#). For further information, including our legal guidelines, please see our full website [Terms and Conditions](#).

Commenting is now closed.

There is 1 comment [Show comments.](#)

 U.S. reveals what Osama bin Laden had in his private library

The 5 best grocery stores in Toronto to find your soul mate 

Toronto criminal lawyer charged by Peel police

Comics

 Mike Babcock won't accept status quo with Maple Leafs: DiManno 

Man shot and killed by police inside Guelph hospital

Jeb Bush says he wants Stephen Harper re-elected



From around the web

itt Buckland

Sataraoo

he guy who pushed past me on the tub justed I go F myself just arrived for his ..with me...

Feb 2015

17,209 FAVORITES



How to Fail Your Job Interview Before You Sit Down
Dice

8 Child Actors Who Didn't Crash And Burn
Discover Fame



21 Women So Beautiful They Put Nature To Shame
Wandering Pioneer



OMG! Celebs Looking Stunning In Their Wedding Dresses...
funorfacts.org

Recommended by 

thestar.com

News
Your Toronto
Opinion
Sports
Business
Entertainment
Life
Diversions
Classifieds
Site Map

Wheels.ca
Insurance Hotline
New in Homes
Star Store
Blogs
Contests
Lottery Results
Obituaries
Corrections
Public Editor
Behavioural Targeting
Today's News
Flyers

Toronto Star Newspapers Ltd.

About
Atkinson Principles
Statement of Principles
Get Home Delivery
My Subscription
Contact Us
Contact Webmaster
FAQ
News Releases
Star Internships
Careers @ the Star

Advertise with us

Advertising Terms
Mediakit
Online Advertising
Print Advertising
Special Features

Initiatives

Santa Claus Fund
Fresh Air Fund
Speakers Bureau
Classroom Connection
Pages of the Past
Report on Community
Giving

Connect with Us

RSS feeds
Twitter Updates
News Alerts
Newsletters
Mobile Devices