

Answers to Question on Notice: Redfern Legal Centre

Question 1: BOSCAR statistics about First Nations and cannabis

The Hon. ROBERT BORSAK: Your evidence is that, because they're over-represented in the BOCSAR statistics, that is supportive of the fact that there's racial profiling going on by the police.

SAMANTHA LEE: Yes. It's not a small over-representation—for example, First Nations people make up around 3 per cent of the population in New South Wales and make-up around 80 per cent of searches in regard to cannabis, or they make up around 60 per cent of searches when it comes to strip searches. We're not talking about a minor increase; we are talking about a very significant, disproportionate amount of searches.

The CHAIR: Ms Lee, did you say 8 or 80?

SAMANTHA LEE: I thought it was 80, but I could stand to be corrected on that.

Answer 1 to question on notice:

The relevant statistic is that "82.55% of all Indigenous people found with a non-indictable quantity of cannabis were pursued through the courts, compared with only 52.29% for the non-Indigenous population" (as per data compiled by BOCSAR). This means that over 80% of Indigenous people found with a small amount of cannabis were being charged for an offence and thus forced to go through the court system (likely getting a harsher penalty and a criminal record). At the same time, a significantly more significant proportion of the non-Indigenous population could stay out of court for the same offence.

See BOCSAR report:

<https://bocsar.nsw.gov.au/research-evaluations/2023/cjb258-summary-cannabis-cautioning.html>

Question 2: Strip search case

The CHAIR: Are there any cases that have tested that? Have you or others taken cases that tested that threshold of "serious and urgent"?

SAMANTHA LEE: There are not many cases that have gone to hearing. Most strip search cases settle. There is a case called Attalla where a man was strip searched, although it was in police custody. He was strip searched on the basis of minor drug possession. The court found that police didn't even meet the threshold of "reasonable suspicion". He was awarded damages in the civil court of \$110,000. There is only one other case, and I can't remember it off the top of my head. There are not many cases that come before the court.

The Hon. CAMERON MURPHY: Could you take that other case on notice?

SAMANTHA LEE: Sure.

Answer 2 to question on notice:

The case is [Fromberg v R \[2017\] NSWDC 259](#). In this case Mr Fromberg successfully appealed a conviction for drug possession on the basis that the drugs found on his person were found during an illegal strip search, and thus inadmissible. The strip search was found to be unlawful as the police officer conducting the search did not have the requisite reasonable suspicion and did not follow required strip search procedure under LEPPRA.

Notably, the strip search was conducted following a general search during which the appellant flinched away from the officer after they reached inside the appellant's pants. The officer considered this suspicious and conducted the strip search based on this reaction. The finding in the appeal was that the invasive nature of the original search was not within the power of an ordinary search. Thus, the "reasonable suspicion that the officer had to conduct the second strip search was based on his own unlawful act" [39].