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Moore v. The Queen: A Substantive, Procedural and Administrative Nightmare

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Case Comment

MOORE v. *THE QUEEN*:[1] A SUBSTANTIVE, PROCEDURAL AND ADMINISTRATIVE NIGHTMARE

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I. INTRODUCTION

Important cases sometimes have modest beginnings. A bystander witnessing a cyclist crossing at an intersection against a red light would be excused for failing to recognize the material from which important Supreme Court of Canada decisions might be forged. Yet from such unprepossessing facts there emerges a case that raises important questions for the administration of criminal justice in this country. The bystander could be excused for failing to see this, since a majority[2] of the judges in the Supreme Court of Canada also seem to have missed most of the issues. Even the minority,[3] who avoided the worst pitfalls, would appear to have been somewhat inconsistent in the development of a coherent policy towards the problems raised by the case. It may well be that its very mundane nature misled the Court into dealing with it at face value so that its wider implications were not fully appreciated.

The facts were simple and not the subject of any dispute. Mr. Moore cycled through an intersection where a red traffic light was showing in his direction. He declined to pull over and identify himself to a police motorcyclist and was arrested for wilfully obstructing a peace officer in the execution of his duty, contrary to the *Criminal Code* of Canada.[4] The accused was tried upon an indictment before a judge and jury on this charge and was acquitted when the trial judge, at the end of the prosecution's case, directed the jury to find the accused "not guilty." This verdict was overturned by the British Columbia Court of Appeal, which found that, when Mr. Moore refused to accede to the constable's request for identification, he was obstructing that constable in the performance of his duties and thus committing, in addition to the original infraction under the provincial *Motor-vehicle Act*,[5]

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[1] *Moore* v. *The Queen*, [1979] 1 S.C.R. 195, 90 D.L.R. (3d) 112, 43 C.C.C. (2d) 83, 5 C.R. (3d) 289, [1978] 6 W.W.R. 462, *aff'g* [1977] 5 W.W.R. 241.

[2] Spence J. (Martland, Ritchie, Pigeon, Beetz JJ. concurring).

[3] Dickson J. (Estey J. concurring).

[4] R.S.C. 1970, c. C-34, s. 118(a).

[5] R.S.B.C. 1960, c. 253, ss. 127, 128 as am. by S.B.C. 1975, c. 46.

a separate criminal offence under section 118(a) of the *Criminal Code*. Since no action was taken on the traffic offence, the only matter before the Supreme Court of Canada was the crime of "wilfully obstructing the police." Five members of the Supreme Court of Canada[6] supported the conclusion of the British Columbia Court of Appeal, while two[7] would have restored the judgment of acquittal at trial.

II. THE NEED FOR EFFECTIVE TRAFFIC LAW ENFORCEMENT

Such is the death, injury and damage caused by road users that enforcement priorities and objectives aimed at reducing this carnage by encouraging good driving and punishing violations are thoroughly justified. Indeed, there is little doubt that the deaths, injuries and damage caused by illegal traffic manoeuvres exceed such harm from "regular" criminal activities. There was no collision in the present case, but disobedience of traffic signs is a major cause of accidents, and the nonoccurrence of such an event on this occasion may well have been quite fortuitous.

The provincial legislatures take the principal role in enacting traffic laws that will assist in attaining these ends, and one of the multitude of duties that society places upon the police is to see that enforcement of these laws is carried out at street level. In addition, the federal Parliament is constitutionally entitled to enact criminal laws dealing with serious misbehaviour by road users, and has done so. Criminal negligence in the operation of a motor vehicle,[8] failing to stop after being involved in an accident with intent to escape civil or criminal liability[9] and dangerous driving[10] provide a few well known examples. On this basis, both the provincial and federal legislative bodies regulate traffic-related offences in Canada. All of the above is taken to be axiomatic, and nothing that follows is intended to suggest that there is no legitimate role for the criminal law in road traffic matters. It is clearly not in the interests of the Canadian public to have ineffective laws controlling the behaviour of road users. Practical enforcement problems may arise, however, because either of the legislative bodies may not have provided a fully effective means for enforcing such laws. What, then, is the role of the courts in identifying the substantive offences involved, in suggesting the appropriate enforcement procedures, and in providing for the fair administration of the sanctioning system thus created? These are some of the questions raised in this case.

III. WHAT SUBSTANTIVE OFFENCES WERE COMMITTED?

All parties to the litigation agreed that Moore committed the offence of proceeding against a red light. There is also an offence in the British Columbia *Motor-vehicle Act* of refusing or failing to stop and identify oneself to

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[6] *Supra* note 2.

[7] *Supra* note 3.

[8] The *Criminal Code*, R.S.C. 1970, c. C-34, s. 233(1). *O'Grady* v. *Sparling*, [1960] S.C.R. 804, (1961) 25 D.L.R. (2d) 145, 128 C.C.C. 1, 33 C.R.N.S. 293.

[9] *Id.*, s. 233(2).

[10] *Id.*, s. 233(4). *Binus* v. *The Queen*, [1967] S.C.R. 594, [1968] 1 C.C.C. 227, 2 C.R.N.S. 118; *Peda* v. *The Queen*, [1969] 4 C.C.C. 245, 7 C.R.N.S. 243 (S.C.C.).

police when driving a *motor* vehicle.[11] Everyone agreed that "motor vehicle" and "vehicle" as defined in the legislation[12] did not include a bicycle. Further, it appeared that the section that purported to apply duties to cyclists[13] placed upon them the same rights and duties as are placed on drivers of "vehicles," not "motor vehicles." Thus Mr. Moore could not be said to have committed the substantive offence under the provincial traffic legislation of failing to stop and identify himself upon request. No court dealing with the *Moore* case came to a different conclusion. Legislative drafting created a hiatus and the courts declined the invitation to close the gap in the provincial statute by imaginative interpretation. Oddly enough, the majority of the Supreme Court of Canada was unable to resist this temptation in connection with the more serious offence under federal criminal law of wilfully obstructing a policeman in the execution of his duty.[14]

The Court's argument for this proposition proceeded with apparent mathematical certainty as follows:

1) As a cyclist, Mr. Moore was subject to the same duties as a vehicle driver (section 173(1), *Motor-vehicle Act*, B.C.).
2) The driver of a vehicle is obliged to stop at a red light (section 127, 128 *Motor-vehicle Act*, B.C.).
3) Therefore Mr. Moore was obliged to stop at the red light.
4) The constable in question was a peace officer with Victoria City Police (sections 17, 22(1) *Police Act*, B.C.).[15]
5) Such a police force is obliged to enforce criminal law and the laws of the province and maintain law and order in the municipality (sections 22(2) *Police Act*, B.C.).
6) The constable was carrying out these duties on the occasion of his dealings with Mr. Moore (sections 30(1), *Police Act*, B.C.).
7) The express powers of arrest without warrant contained in the *Motor-vehicle Act* had no application to this case. (Section 63 *Motor-vehicle Act*).
8) The powers of arrest without warrant in the *Criminal Code* applied to this situation (section 101 *Summary Convictions Act*, B.C.,[16] and the *Criminal Code*, section 450(2)).
9) This power to arrest without warrant for going against the red light would only apply if it were necessary to establish Moore's identity (*Criminal Code*, section 450(2)(d)(i)).
10) In requesting Moore to identify himself, the constable was carrying out the duties of enforcing the law of the province.
11) When Moore refused to accede to the constable's request for his identification, he was obstructing that constable in the performance of his duties.

It is submitted that, while propositions 1 to 7 and 10 are correct, propositions 8, 9 and 11 are wrong in law. Proposition 11 raises a question of substantive law, i.e., were the essential ingredients of the offence substan-

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[11] R.S.B.C. 1960, c. 253, s. 58(a)(b).

[12] *Id.*, s. 2.

[13] S.B.C. 1975, c. 46, s. 173(1).

[14] The *Criminal Code*, R.S.C. 1970, c. C-34, s. 118(a).

[15] S.B.C. 1974, c. 64. [Query whether on the particular offence being considered his being a "peace officer" under s. 2 of the *Criminal Code* was not more relevant, but no one in the Supreme Court considered this. Nothing turns on this point, however, since the constable obviously came within the *Criminal Code* definition in any event.]

[16] R.S.B.C. 1960, c. 373.

tiated? Propositions 8 and 9 raise a question of criminal procedure, namely, was there a power of arrest in the circumstances? This part will continue to deal with the substantive offence and the part following will consider the power of arrest question. It should be noted, however, that the majority proceeded to the substantive question by making the existence of a power of arrest a necessary link in the chain of its argument. As a result, even if the reader is not convinced by my criticism of the answer reached on the substantive question, then provided that the next section succeeds in showing that there was no power of arrest in the circumstances, the conclusion of the majority of the Court on the substantive offences must still be erroneous.

On the substantive question, the majority simply states that: "A constable on duty observed the appellant in the act of committing an infraction of the [Motor-vehicle Act] and . . . that the constable had no power to arrest the accused for such offence unless and until he had attempted to identify the accused so that he might be the subject of summary conviction proceedings." The result of this is that "when the appellant Moore refused to accede to the constable's request for his identification he was obstructing that constable in the performance of his duties."[17]

There are two major questions here. First, the wisdom of elevating provincial summary conviction offences into full-blown crimes under the *Criminal Code*. Second, the question of the accused's being obliged to identify himself which the Court held to arise from section 450(2) of the *Criminal Code*.

On the first question, it is perfectly competent for the British Columbia Legislature to make it an offence to fail to identify oneself to the police. Indeed, they have done so expressly in section 58 of the *Motor-vehicle Act*.[18] Poor draftsmanship resulted in the obligation applying to motor vehicle drivers, but not to "cyclists." Thus a case can be made for including cyclists in the same category and subject to the same penalties as motor vehicle drivers, but surely not for saying that cyclists commit a *Criminal Code* offence punishable on indictment by two years' imprisonment. Could anything be more curious? The offender whom the province either ignored or deemed too insignificant to punish by a fine becomes a "real criminal" under the *Criminal Code* as a result of this decision.

On the second question, the Supreme Court of Canada makes a fundamental mistake. Section 450(2) was introduced into the *Criminal Code* by the *Bail Reform Act*[18a] to prevent *inter alia*, unnecessary arrests from being made where accused persons identified themselves and arrest was otherwise unnecessary. The duty in section 450(2) is on the constable *not to arrest* unless the accused cannot be identified or certain other factors are present. This surely places *no duty at all* on the accused to supply this information. He can choose to be arrested rather than identify himself. If the majority of the Supreme Court of Canada is right, then, in every case where a constable is relieved of his duty *not* to arrest by reason of a refusal by the accused to

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[17] *Supra* note 1, at 203 (S.C.R.), 119 (D.L.R.), 89 (C.C.C.) *per* Spence J. (The sentences are placed here in the chronological order in which the events they describe occurred.)

[18] R.S.B.C. 1960, c. 253.

[18a] R.S.C. 1970, c. 2 (2d Supp.) s. 5.

identify himself, there would always be at least two charges against the accused, i.e., first, the original offence for which the arrest was made, and second, a charge of wilful obstruction of the police by failing to identify himself.

It was surely never intended that section 450(2) become a trap to create more offences where people did *not* identify themselves to the police, but the object was to prevent unnecessary arrests where identity was revealed. This decision, therefore, results in a ludicrous reversal of what was sought to be achieved by section 450(2).

The minority decision rejects the application of the *Criminal Code* offence to the facts of this case on the basis that there was no "common law," "implied" or "reciprocal" duty upon the accused to identify himself such that a refusal would create a discrete substantive offence. This position was supported (in the view of Dickson J., Estey J. concurring) by the presumption of innocence, the privilege against self-incrimination and the fact that to hold otherwise would be to render totally superfluous all express statutory provisions making it a specific offence to fail to identify oneself in the specific circumstances identified by the legislation in question. In other words, if there was a general duty to identify oneself, why would there be the need for such specific legislative obligations? This is the strongest part of the minority judgment. It is well reasoned and resort is made to relevant Canadian and English case law and academic treatises. It is clearly superior to the majority decision which relies on a solitary English authority, and then only to state that it is irrelevant. This case, *Rice* v. *Connolly*,[19] holds that there is no general power in the police to demand that a citizen identify himself under penalty of obstructing the police if he declines to do so.

The majority decision agrees that there is no such general duty under Canadian law either, but claims that this does not apply where the person to whom the demand is made has committed an offence. This conclusion is, however, firmly tied to the provisions of section 450(2) of the *Criminal Code*, and this reverses the whole role and purpose of that subsection. Unfortunately, this misconception, which led the majority astray on the substantive question, caused the minority (which answered the substantive question, in my view, correctly) to be misled on the issue of the power of arrest, to which we now turn.

IV. WAS THERE A POWER OF ARREST WITHOUT WARRANT?

The British Columbia legislature did, in fact, make express provision for powers of arrest without warrant in the *Motor-vehicle Act* in section 63.[20] It was no part of the argument of the majority or the minority of the Supreme Court, however, that this section applied to the facts of this case. Both hold, nevertheless, that certain powers of arrest in the *Criminal Code* became available because of section 101 of the British Columbia *Summary Convictions Act* which states:

> Where, in any proceeding, matter or thing to which this Act applies, express provision has not been made in this Act or only partial provision had been made,

[19] [1966] 2 All E.R. 649.

[20] R.S.B.C. 1960, c. 253.

> the provisions of the Criminal Code relating to offences punishable upon summary conviction apply, *mutatis mutandis* as if the provisions thereof were enacted in and formed part of this Act.[21]

This provision leads both the majority and the minority directly to section 450(2) of the *Criminal Code*. This subsection structures the exercise of discretion by a peace officer in deciding whether or not to make an arrest without a warrant, but the arrest, *per se*, is expressly authorized under section 450(1). This is very important. Section 450(2) contains no powers of arrest at all. Dickson J., is clearly in error when he says: "Although Constable Sutherland had no power under s. 63 of the *Motor Vehicle Act* to arrest the accused without a warrant, additional powers of arrest contained in s. 450(2) of the Criminal Code were available."[22]

In a similar vein, it is submitted that Spence J. allows himself to be misled by saying in respect of section 450(2): "In accordance with those provisions, Constable Sutherland could only have arrested Moore for the *summary conviction offence* of proceeding against a red light if it were necessary to establish his identity." [Emphasis added.][23]

To understand what is happening here, it is necessary to distinguish the powers of arrest without warrant *per se* (section 450(1)) from the restrictions placed upon their application (section 450(2)). Neither the majority nor the minority quotes directly from section 450(1). Had they done so, they would have found that the *Criminal Code* does not grant a power to arrest without warrant for a "summary conviction offence." The subsection states:

> A peace officer may arrest without warrant
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> (a) a person who has committed an indictable offence or who, on reasonable and probable grounds, he believes has committed or is about to commit an indictable offence,
> (b) a person whom he finds committing a *criminal offence*, or
> (c) a person for whose arrest he has reasonable and probable grounds to believe that a warrant is in force within the territorial jurisdiction in which the person is found. [Emphasis added.]

Since no indictable offence and no warrant was involved in this case, only section 450(1) (b) can be relevant. But this subsection makes no reference to a summary conviction offence. Since section 101 of the British Columbia *Summary Convictions Act* applies the provisions of the *Criminal Code* relating to offences punishable on summary convictions, this section does not expressly apply the provisions of the *Criminal Code* relating to "a criminal offence."[24] Nor is it so clear that the words *mutatis mutandis* in section 101 of the provincial legislation will be sufficient to refer to a power related to

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[21] R.S.B.C. 1960, c. 373.

[22] *Supra* note 1, at 208 (S.C.R.), 122 (D.L.R.), 93 (C.C.C.).

[23] *Id.*, at 203 (S.C.R.), 118 (D.L.R.), 89 (C.C.C.).

[24] Since all offences that are not indictable must be summary conviction offences it is not unreasonable to assume that Parliament intended something different to flow from its use of the expression "criminal offence" than would have been the case if the expression "summary conviction offence" had been used. But even if it did not, this issue can form no part of the argument of any of the justices in the Supreme Court of Canada. They did not deal with s. 450(1) at all.

"*a criminal offence*" in section 450(1)(b) of the *Criminal Code*. Certainly, by never mentioning section 450(1), the Justices of the Supreme Court of Canada could not have turned their minds to this question. The Court might have been better served by an argument that linked section 101 of the British Columbia *Summary Convictions Act* to Part XXIV of the *Criminal Code* — entitled *Summary Convictions*. Section 728, contained therein, applies Part XIV *mutatis mutandis* "with respect to compelling the appearance of an accused before a justice," and this includes section 450(1), the arrest powers section, and section 450(2), the restrictions on their exercise. This, at least, would have been more competent statutory construction than directly linking section 101 of the *Summary Convictions Act* to section 450(2) of the *Criminal Code*. Even so, it would then require the *mutatis mutandis* provision of section 101 to be applied through the *mutatis mutandis* provision in section 728(1) of the *Criminal Code* to give the policeman a power of arrest without warrant in the circumstances of this case. To adopt this very tenuous construction would be quite out of keeping with the rest of the reasoning of Dickson and Estey JJ., who were unwilling to create a substantive criminal offence out of Mr. Moore's refusal to identify himself. Why would they wish to restrict the application of a crime in the *Criminal Code* to circumstances able to be covered by properly drafted provincial legislation in respect of the substantive offence, and yet be willing to engage in mental gymnastics to apply the arrest provisions of the *Criminal Code* to provincial legislation?

By ignoring section 450(1), both the majority and minority were led to shortcut the connection between section 101 of the British Columbia *Summary Convictions Act* and section 450(2) of the *Code*, but the minority was inconsistent in applying federal procedural provisions, while declining to do the same with substantive questions. The majority was consistent, at least, in applying both substantive and procedural provisions of the *Criminal Code* to this matter but, in my view, the consistency involved was in being consistently wrong in doing so.

The point which no one in the Supreme Court of Canada seems to have grasped is that one has to have a power of arrest under section 450(1) before the duty not to arrest can possibly arise under any of the circumstances outlined in section 450(2).[25] This is made plain by section 450(3) whereby, if a peace officer wrongly ignores his duty not to arrest under section 450(2) and proceeds to arrest, that arrest is still a valid one for the purposes of the *Criminal Code*, i.e., his breach of duty is left to the civil courts to remedy on an action taken by the person unnecessarily arrested. This would be impossible if the *power* to arrest arose because of the presence of the factors (including inability to establish identity) mentioned in section 450(2) since, on the formulation by the Supreme Court, there could be no possible basis for the arrest.

Thus, Spence J. is wrong when he says: "In accordance with [s. 450(2) Code] Constable Sutherland could only have arrested Moore for the summary conviction offence of proceeding against a red light if it were necessary to

[25] See generally Scollin, *The Bail Reform Act* (Toronto: Carswell, 1972) especially at 4 and 26.

establish his identity."[26] On the contrary, Constable Sutherland could only have arrested Moore for the summary conviction offence of proceeding against a red light if he had a power to arrest Moore under section 450(1), and only then would have had a duty *not* to arrest him if Mr. Moore identified himself and none of the other factors mentioned in section 450(2) applied to the case. Since section 450(1) makes no mention of a summary conviction offence, Spence J. can have no assistance from this subsection, and to the extent that the minority justices agree with Spence J.'s analysis, they too are in error on this point.[27]

The ultimate question in this procedural part of the case should be, "If the province has expressly granted some powers of arrest without warrant for some provincial offences (section 63) but not others, should the courts be so keen to find that such powers can be inferred by tortuous reasoning from federal legislative sources?" It is surely a solid argument that such a question ought to be answered in the negative if to do otherwise would result in such a wide availability of powers of arrest without warrant that the express provisions by the provincial legislature on the point are rendered totally superfluous. This is the argument which the minority found compelling on the substantive question, yet unaccountably ignored on the procedural issue.

Since the provinces often pass legislation with express powers to arrest without warrant it is not at all unlikely that, in a case where they have not done so, it was their intention that such powers not be granted. After all, arrest without warrant is the most intrusive means of commencing a prosecution and the one which involves the greatest interference with a citizen's liberty. It is usually carried out by a junior public official and often occurs in an entirely unsupervised setting. It would not be surprising if a legislature decided to reduce the incidence of such activity in respect of minor offences. If the legislature has not made its intention thoroughly clear on the issue, any doubt should surely be resolved in favour of not finding that such sweeping powers have been granted in the case of minor offences.

In theory, the legislature can clearly express itself on the point and accept, at the polls, the verdict of the public if the law-maker has overstressed effective law enforcement in balancing competing societal interests. It may be, of course, that democracy does not work quite so directly. A government, making express the power to arrest unconditionally for all summary conviction offences and thus ensuring effective law enforcement, may not be discomfitted at the polls because this issue may be dwarfed by others more compelling. It is a possibility that will never be put to the test if we continue to have ambiguous legislation interpreted by the judges in such a way that the legislature can deny that it is responsible for any draconian effects thereby produced, while the independence of the judiciary ensures that the interpreters are insulated from normal political processes. It is a system worthy of Kafka.[28] The legislature, which is responsible to the electorate, passes

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[26] *Supra* note 23.

[27] *Supra* note 1, at 208 (S.C.R.), 122-23 (D.L.R.), 92-93 (C.C.C.).

[28] Kafka, *The Trial* (New York: Knopf, 1937). The classic tale of benign arrest (the accused is left at liberty), formless trial (the nature of the charge is never ascertained) but nevertheless certain (and for the accused fatal) result.

"soft" (or ambiguous) laws that are interpreted "harshly" by a judiciary that is free of electoral sanction.[29]

V. ESCALATION OF POLICE AND PROSECUTORIAL DISCRETION

A court has to take responsibility for the legal system which its decisions help to shape. The result of the majority decision in *Moore* will be to make it possible for every case in which an arrest has to be made in order to identify the accused to result in an additional charge of obstructing the police. Where provincial statutes make it an offence in certain circumstances not to identify oneself (e.g., British Columbia *Motor-vehicle Act*, section 58), there will be the possibility of charging the provincial offence and, in addition, the *Criminal Code* offence arising out of the same fact situation. This encourages horizontal overcharging (laying a greater number of charges than the facts warrant) and vertical overcharging (laying more serious charges than the facts warrant). Both are well recognized devices used as a means of obtaining a plea of guilty to one offence in exchange for the Crown's agreeing not to proceed with the other. Where such practices are followed automatically, this is an example of the unacceptable side of plea-bargaining.[30]

More generally, the availability of such additional charges allows unstructured Crown discretion in respect of who will be prosecuted for a *Criminal Code* offence that is punishable by two years imprisonment on indictment, and who will be allowed to face a mere provincial violation punishable by a small monetary penalty. The unwillingness of the Supreme Court of Canada to control Crown discretion,[31] or to develop an abuse of process doctrine[32] could be balanced to some extent if the Court's decisions, in cases such as this, discouraged or reduced opportunities for engaging in unfettered Crown discretion. But it seems we must endure the worst of both worlds—no control of Crown discretion and decisions like the present which increase the ambit for its exercise.

VI. CONCLUSION

None of these effects was a necessary result of the problem posed by Mr. Moore's conduct. Of course, the administration of justice grinds to a halt if an offence is committed for which there is no power to arrest and the accused refuses to identify himself to police. But there is a remedy. The British Columbia legislature should have been left to amend its traffic laws to make clear provision for cyclists who do not identify themselves to police

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[29] The whole growth of strict liability in the criminal law can be viewed as an example of this phenomenon at work: see *R.* v. *Prince* (1875), 2 C.C.R. 154, [1874-80] All E.R. Rep. 881, and the myriad of cases to which it gave birth. See also *The Meaning of Guilt: Strict Liability* (Law Reform Commission of Canada Working Paper No. 2, 1974).

[30] See Hooper, *Discovery in Criminal Cases* (1972), 50 Can. B. Rev. 445 at 462, for a description of vertical and horizontal overcharging and their use in plea bargaining.

[31] *R.* v. *Smythe*, [1971] S.C.R. 680, 19 D.L.R. (3d) 480, 3 C.C.C. (2d) 366, 16 C.R.N.S. 147.

[32] *R.* v. *Osborn*, [1971] S.C.R. 184, 15 D.L.R. (3d) 85, 1 C.C.C. (2d) 482, 12 C.R.N.S. 1. *Rourke* v. *The Queen* (1977), 76 D.L.R. (3d) 193, 35 C.C.C. (2d) 129, 38 C.R.N.S. 268.

(by amending section 58 of the *Motor-vehicle Act*) and, should it so desire, to provide for additional powers of arrest without warrant (by amending section 63 of the *Motor-vehicle Act*).

The last thing that should have happened was for the Supreme Court of Canada to find an enforcement solution for this particular case that will have consequences for substantive, procedural and administrative aspects of criminal law enforcement far and beyond the confines of this case. These include:

1) A widening of the substantive criminal offence of wilfully obstructing the police by turning a police duty *not* to arrest in certain circumstances into a positive citizen's duty to identify oneself in such cases.[33]
2) A widening of procedural criminal law by allowing the powers of arrest for "criminal offences" to be applied to provincial summary conviction offences without *express* legislative intention being so indicated by the province.[34]
3) An increase in the opportunity for unsupervised police and prosecutorial discretion in laying charges and engaging in improper aspects of plea bargaining by unnecessarily creating concurrent coverage of the same conduct by federal crimes and provincial infractions.

These, then, are the results which the Supreme Court of Canada has achieved. It is hard to believe that this is what the Court would have chosen to do if all of the issues had been properly analyzed.

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[33] For another example of extending the ambit of this offence by the Supreme Court of Canada, see *R.* v. *Stenning*, [1970] S.C.R. 631, 10 D.L.R. (3d) 224, 3 C.C.C. 145, 11 C.R.N.S. 68, and comment thereon in Grant, *The Supreme Court of Canada and the Police* (1977-78), 20 Crim. L.Q. 152 at 155.

[34] For another example of extending arrest powers in minor cases by the Supreme Court of Canada, see *R.* v. *Biron*, [1976] 2 S.C.R. 56, 59 D.L.R. (3d) 409, 4 N.R. 45, 23 C.C.C. (2d) 513, 30 C.R.N.S. 109 and comment thereon in Grant, *Supra* note 33, at 157 ff. This extension of police power beyond that recognized at common law is also evident in the Supreme Court of Canada decision of *Eccles* v. *Bourque* dealing with forced entry to private premises by police acting without a search warrant: [1975] 2 S.C.R. 739, 50 D.L.R. (3d) 435, 3 N.R. 259, [1975] 1 W.W.R. 609, 19 C.C.C. (2d) 129, 27 C.R.N.S. 325, and comment thereon in Grant, *supra* note 33, at 161 ff. note 33 at 161 *et seq.*