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THE  
POLICE MANUAL  
OF ARREST,  
SEIZURE &  
INTERROGATION

Eighth Edition

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THOMSON  
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CARSWELL™

## 20. ASSISTING A PEACE OFFICER

## 21. REFUSAL OF CITIZEN TO IDENTIFY SELF

The common law does not require a citizen to identify himself or carry identification of any sort. Therefore, while it may be the mark of a good citizen to identify himself when asked to do so, a police officer must not use force to compel someone to identify himself when he refuses; otherwise, he will be guilty of criminal assault and be liable to civil damages.<sup>119</sup>

Section 129(a) of the Criminal Code makes it an offence to "wilfully obstruct a public or peace officer in the execution of his duty." However, the common law has never considered it an offence of obstruction for a person to refuse to identify him or herself and thus prevent a police officer from carrying out his general duties to investigate crimes? As was noted by Lord Parker, Chief Justice of England in *Rice v. Connolly*:<sup>120</sup>

It seems to me quite clear that though every citizen has a moral duty or, if you like, a social duty to assist the police, *there is no legal duty to that effect*, and indeed the whole basis of the common law is the right of the individual to refuse to answer questions put to him by persons in authority, and to refuse to accompany those in authority to any particular place; short, of course, of arrest.

In *Guthrie*,<sup>121</sup> the accused had been observed by a police officer leaving a parking lot. When the accused was stopped by the police, she refused to identify herself and was convicted by the trial judge on the basis that the failure to identify herself in the circumstances amounted to an obstruction of the officer. The Alberta Court of Appeal, however, disagreed. It was held that although the officers were acting in furtherance of their duties in attempting to clarify the accused's identity and presence, which duties were authorized by the Alberta Police Act, as including the prevention of crime and apprehension of

criminals, a wilful obstruction required that it not only be intentional but be done without lawful excuse. Unless the officer actually observed the accused committing an offence known to law, there was no right to ask the person to identify himself or a reciprocal duty on the part of the citizen to do so.

## 22. CONSEQUENCES OF AN ILLEGAL ARREST

An illegal or unlawful arrest by a police officer will constitute a defence to a charge of escaping from lawful custody, assaulting a peace officer in the execution of his duty or obstructing or resisting a peace officer in the execution of his duty. The reason for this is that a person cannot be said to have escaped lawful custody unless the officer had lawful authority to place him in custody. Similarly, a person cannot be guilty of assaulting a police officer in the lawful execution of his duty if the arrest itself was unlawful.

Before a person can be said to be obstructing a peace officer in the execution of his duty, it must be established by the officer that he was, in fact, acting under a duty.<sup>122</sup> Similarly, a person cannot be convicted of resisting a peace officer in the execution of his duty unless the officer was acting strictly within the limits of his powers and duty. If the officer makes an unlawful arrest, then there is a common law right to resist that arrest.<sup>123</sup>

## 23. ARREST UNDER PROVINCIAL STATUTES AND BY-LAWS

Section 91(27) of the Constitution Act of 1867 only authorizes the Parliament of Canada to pass laws relating to the criminal law. The provinces do, however, have the right to create offences to enforce legislation within their jurisdiction, such as, for example, the Highway Traffic Act of a province. Such offences cannot be prosecuted by indictment; they may only be prosecuted on summary conviction.

In Ontario, the Provincial Offences Act,<sup>124</sup> governs the trial of provincial offences. Sections 144(2) and 145 authorize an arrest without warrant under certain defined circumstances:

144(2) A police officer may arrest without warrant a person for whose arrest he or she has reasonable and probable grounds to believe that a warrant is in force in Ontario.

145. Any person may arrest without warrant a person who he or she has reasonable and probable grounds to believe has committed an offence and is escaping from and freshly pursued by a police officer who has lawful authority to arrest that person, and, where the person who makes the arrest is not a police officer, shall forthwith deliver the person arrested to a police officer.

Each provincial statute must, therefore, be examined to see whether a power of arrest exists with or without a warrant. Similarly, whether or not a power of arrest with or without warrant exists to enforce a municipal by-law will depend upon whether the Municipal Act of that province authorizes a local municipality to pass a by-law permitting the arrest of someone for the breach of that by-law.