
SALHANY'S
POLICE MANUAL
OF ARREST,
SEIZURE &
INTERROGATION

Eleventh Edition

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other person to imminent bodily harm or death, or reasonable grounds to believe that prior announcement would result in the imminent loss or destruction of evidence. In either case, the officer's reasonable grounds to dispense with "proper announcement" must exist, *immediately before* entering the dwelling house (s. 529.4(2) and (3)).

21. ASSISTING A PEACE OFFICER

At common law, a police officer could call on anyone for assistance in carrying out an arrest. In fact, it was an offence for anyone to refuse to come to the officer's assistance when requested by the officer if he or she could reasonably do so. This duty is recognized under section 129(b) of the *Criminal Code*. That section makes it an indictable offence to "omit, without reasonable excuse, to assist a public officer or peace officer in the execution of his duty in arresting a person or in preserving the peace, after having reasonable notice that he is required to do so . . ."

22. REFUSAL OF CITIZEN TO IDENTIFY SELF

The common law does not require a citizen to identify oneself or carry identification of any sort. Therefore, while it may be the mark of a good citizen to identify oneself when asked to do so, a police officer must not use force to compel someone to identify oneself if he or she refuses; otherwise, the officer will be guilty of criminal assault and liable to civil damages: *Koehlin v. Waugh* (1957), 118 C.C.C. 24 (Ont. C.A.).

This general rule often places a police officer in a difficult position. The officer may become suspicious of a

certain person's conduct and may simply wish to ask him or her to identify themselves so that the officer can be satisfied that the person is not up to some sort of "mischief". If a person refuses to cooperate, can he or she be charged with "obstructing the police"?

Section 129(a) of the *Criminal Code* makes it an offence to wilfully obstruct a public or peace officer in the execution of his or her duty. However, the common law has never considered it an offence of obstruction for a person to refuse to identify oneself and thus prevent a police officer from carrying out his or her general duties to investigate crimes. As was noted by Lord Parker, Chief Justice of England in *Rice v. Connolly*, [1966] 2 Q.B. 414 (Eng. Div. Ct.) at p. 419:

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* (1982), 28 C.R. (3d) 395 (Alta. C.A.), 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 of obstruction 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 herself or a reciprocal duty on the part of the citizen to do so.

23. 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 or her duty, or obstructing or resisting a peace officer in the execution of his or her 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 or her in custody. Similarly, a person cannot be guilty of assaulting a police officer in the lawful execution of his or her duty if the arrest itself was unlawful.

Before a person can be said to be obstructing a peace officer in the execution of his or her duty, it must be established by the officer that he or she was, in fact, acting under a duty: *Johanson*, [1947] 4 D.L.R. 337 (S.C.C.). Similarly, a person cannot be convicted of resisting a peace officer in the execution of his or her duty unless the officer was acting strictly within the limits of their powers and duty. If the officer makes an unlawful arrest, then there is a common law right to resist that arrest: *Christie v. Leachinsky*, [1947] A.C. 573 (U.K. H.L.).

24. ARREST UNDER PROVINCIAL STATUTES AND BYLAWS

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.

In Ontario, the *Provincial Offences Act*, 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 bylaw will depend upon whether the Municipal Act of that province authorizes a local municipality to pass a bylaw permitting the arrest of someone for the breach of that bylaw.