IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Boyce, 2004 NSSC 261

Date: 20041216
Docket: S.H. No. 226350
Registry: Halifax

Between:

Shawn Edward Boyce

Appellant

v.

Her Majesty the Queen, on the information of Constable Aurele Pelletier

Respondent

Judge: The Honourable Associate Chief Justice M. MacDonald

Heard: November 17, 2004 in Halifax, Nova Scotia

Decision: December 16, 2004

Counsel: Jeffrey S. Moors (Boyne Clarke) for the Appellant

Christopher Nicholson (Public Prosecution Service) for the Respondent

BY THE COURT:

[1] This Appeal involves a police detention that the Appellant contends was arbitrary, and thereby, in violation of his s. 9 *Charter* rights.

BACKGROUND

[2] On July 19, 2002, at approximately 10:30 p.m. two R.C.M.P. officers were patrolling in a cruiser along Pine Hill Drive in Gaetz Brook, Halifax County. The officers noticed an all-terrain vehicle ("ATV") traveling along a recreational trail, but heading towards this public street. The ATV was being operated by the Appellant, Mr. Shaun Boyce. The officers, at that time believing that Mr. Boyce was about to drive the ATV illegally along a public street, decided to stop him. They pulled up to and stopped their cruiser in front of the ATV, thereby preventing Mr. Boyce from traveling any further towards the street. The officers then approached Mr. Boyce with the sole purpose of warning him not to travel on the highway. During this brief initial encounter, the officers detected signs of impairment by alcohol. This led to a breathalyzer demand, and Mr. Boyce being subsequently charged under s. 253 of the *Criminal Code*.

[3] The trial was held before Associate Chief Judge Gibson of the Nova Scotia Provincial Court. Mr. Boyce argued that by this initial encounter he was detained. He further argued that because he was ostensibly doing nothing illegal at the time, this detention was arbitrary; thereby leading to a s. 9 *Charter* breach. As such, Mr. Boyce sought to have the conscripted breathalyzer evidence excluded pursuant to s. 24(2) of the *Charter*.

[4] Gibson, A.C.J. found that while the initial encounter amounted to a detention, it was not arbitrary in the circumstances. He found this police action to be justified as part of their common law investigative authority. Consequently, the learned Trial Judge concluded that Mr. Boyce's *Charter* rights were not breached. As a result, he was convicted of "failing the breathalyzer" [s. 253(b)].

THE GROUNDS OF APPEAL

[5] On appeal before me, Mr. Boyce raises the following grounds:

1. The Trial Judge erred in convicting the Appellant on the basis of evidence improperly obtained;
2. The Trial Judge erred in admitting evidence obtained in violation of the Section 9 *Charter*;
3. The Trial Judge erred in failing to find that the Appellant was arbitrarily detained pursuant to Section 9 of the *Charter*;
4. The Trial Judge erred in finding that Section 17 of the *Off Highway Vehicles Act* does not violate Section 9 of the *Charter.*

[6] For my present purposes, these four grounds can be distilled into essentially one issue; that is, did the learned Trial Judge err by concluding that Mr. Boyce's detention was not arbitrary?

SCOPE OF APPELLATE REVIEW

[7] Because the Trial Judge heard and considered the evidence surrounding Mr. Boyce's detention, and applied that evidence to the law surrounding s. 9 *Charter* applications, his conclusion involves a question of mixed law and fact.

[8] Oland, J.A. of our Nova Scotia Court of Appeal in *R. Ryan,* [2002] NSCA 153 recently discussed the standard of review in summary conviction appeals. Beginning at paragraph 14, she noted:

> 14 The scope and standard of review in a summary conviction appeal was summarized by Cromwell, J.A. in *R. v. Nickerson,* [1999] N.S.J. No. 210 (C.A.):
>
> > Absent an error of law or a miscarriage of justice, the test to be applied by the Summary Conviction Appeal Court is whether the findings of the trial judge are unreasonable or cannot be supported by the evidence. As stated by the Supreme Court of Canada in *R. v. Burns,* [1994] 1 S.C.R. 656 at 657, the appeal court is entitled to review the evidence at trial, re-examine and reweigh it, but only for the purpose of determining whether it is reasonably capable of supporting the trial judge's conclusions. If it is, the Summary Conviction Appeal Court is not entitled to substitute its view of the evidence for that of the trial judge. In short, a summary conviction appeal on the record is an appeal; it is neither a simple review to determine whether there was some evidence to support the trial judge's conclusions nor a new trial on the transcript.
>
> 15 *R. v. Biniaris,* [2000] 1 S.C.R. 381 at para 42 confirmed that the test for an appellate court determining whether a judgment is unreasonable or cannot be supported by the evidence was that set out in *R. v. Yebes*, [1987] 2 S.C.R. 168 at p. 185, namely: whether the verdict is one that a properly instructed jury acting judicially, could reasonable have rendered. In *Yebes*, in discussing the function of an appellate court, the Supreme Court of Canada stated at para 25:
>
> > The Court must determine on the whole of the evidence whether the verdict is one that a properly instructed jury, acting judicially, could reasonably have rendered. While the Court of Appeal must not merely substitute its view for that of the jury, in order to apply the

> test the Court must re-examine and to some extent reweigh and consider the effect of the evidence.

[9] Dissenting in *Ryan*, Chipman J.A. applied the test set out recently by the Supreme Court of Canada in *Housen v. Nikolaisen,* [2002] S.C.J. No. 31 (S.C.C.). This involves whether the trier of fact committed "palpable or overriding error". At paragraph 32, Chipman, J.A. notes:

> 32 On the evidence before him the trial judge was not prepared to discount the evidence of Constable Clarke respecting the strong smell of alcohol on the basis of the quotation from Alan Gold. This conclusion is not unreasonable and no palpable or overriding error on the part of the trial judge in coming to it appears.

See also *R. v. Naif*, [2004] NSCA 142 at paragraph 10 and *R. v. Braun*, [2003] A.J. No. 48.

THE TRIAL JUDGE'S DECISION

1. The Facts

[10] The facts, as concluded by Judge GIbson, depict a relatively innocuous detention. I refer first to his written decision beginning at page 3:

> In summary, the facts relevant to this **Charter** application are as follows. At or about 10:30 p.m. on the 19th day of April, 2002 [sic], the accused was operating an "off highway vehicle" being an all terrain vehicle (ATV) on a recreational trail, formerly an abandoned railway line near Pinehill Drive in an area at or near Gaetz Brook, Halifax County, Nova Scotia. My oral findings with respect to time and place were somewhat erroneous when I referred therein to the time as approximately 10 p.m. and the place as being Musquodoboit Harbour. The accused was proceeding at a slow speed of approximately one to two kilometres per hour towards Pinehill Drive where the trail came near and perhaps intersected with that street. He was observed by two RCMP officers who were patrolling in that area in a police cruiser. Constable Pelletier, the driver of the police cruiser, pulled

his vehicle in front of the ATV operated by the accused, thus blocking any further forward motion of the ATV.

The ATV was not on the street or highway at the point where it was stopped. It was, however, close to the boundary of Pinehill Drive. In accordance with the definition of "highway" found in the **Motor Vehicle Act** which includes, among other things, a street, I hereinafter refer to Pinehill Drive as a highway.

There was no basis for any belief that the accused had committed or was committing any offence when the police cruiser pulled in front of this ATV. The police did not testify to having any such belief. Constable MacKinnon, who was with Constable Pelletier, testified, however, that the operation of ATV's on the highway in this area was a concern for the police and the public thereby resulting in complaints and the police "catching" ATV's on the highway.

Constable Pelletier exited his vehicle, approached the accused, and engaged him verbally. Constable Pelletier believed that the accused was about to operate his ATV on the highway. The purpose of blocking any forward movement of the ATV and engaging the accused in conversation was to direct him with respect to his obligation not to operate the ATV on the highway in a manner that would contravene Section 12 of the **Off Highway Vehicles Act.** Constable Pelletier first asked where the accused was going to which question he responded that he was going up the road to his home. That response prompted the constable to advise the accused that he wasn't allowed to drive on the road.

...

During the initial conversation with the accused, Constable Pelletier made observations and received information from the accused which caused Constable Pelletier to suspect that the accused had consumed alcohol. The police therefore assumed further control over the accused's movement by directing that he get off his ATV and sit in the back seat of the police cruiser after that initial conversation. The initial detention therefore quite quickly turned into a criminal investigation leading to a formal arrest of the accused and the Section 253(a) and Section 253(b) charges on July 19, 2002. Had the initial detention not occurred with the resulting verbal exchange, it appears unlikely that the Section 253(a) and (b) charges would have risen.

[11] Earlier in the proceedings, Judge Gibson orally made some findings of fact consistent with those in his written judgement. Beginning at page 109 of the trial transcript (Tab 3 of the Appeal Book) he noted:

But for the purposes of the arbitrary detention issue, I would find from the evidence that on the date in question, the 19th of July, 2002, at approximately 10 p.m. or shortly thereafter, Mr. Boyce was observed by Constable Pelletier operating an ATV motor vehicle. I would find that the motor vehicle was being operated at the commencement of a trail which is the roadbed of an abandoned railway line in the area of Musquodoboit Harbour. That the vehicle was proceeding away from the trail towards the street or highway known as Pinehill Drive and when it was observed by Constable Pelletier, it was approximately ten feet from that street or highway. Because of a concern regarding the operation of all terrain vehicles on roads or streets in this area, Constable Pelletier, operating his patrol vehicle, proceeded to the area where the ATV was being operated. The ATV was operated at a very low rate of speed and I would conclude that it was declining in speed to the point where it actually stopped. It was traveling at the rate of speed of somewhere between two and one kilometers per hour when it was observed. Whether it was fully stopped when Constable Pelletier pulled in front of it or alongside of this ATV, I am not certain from the facts but I don't think it is material. At that time it was the intention of Constable Pelletier to engage the operator of this ATV, being Mr. Boyce, and direct him with respect to his obligation regarding the non-operation of ATV's on a highway or street. He made inquiries with respect to who this individual was and where he was going. Constable Pelletier believed that he was entitled to intercept this individual under the provisions of the **Off-Highway Vehicles Act**. I find on the evidence that there was no belief at that particular point in time in the mind of Constable Pelletier that Mr. Boyce had committed any offence under the **Off- Highway Vehicles Act** but there was a clear belief in Constable Pelletier's mind that this individual was about to do that and therefore his reason for so stopping Mr. Boyce was to impart this advice and make some inquiries with respect to who he was and what he was doing.

2. Detention

[12] On these facts Judge Gibson found that Mr. Boyce was, in fact, detained for the purpose of s. 9. At paragraph 7 of his written decision, he concludes:

> [7] The actions of the police by blocking the movement of the ATV with their police cruiser, followed by Constable Pelletier's approach on foot toward the accused, constituted a "direction" under the provision of Section 17 of the **Off Highway Vehicles Act.** Section 17 provides:
>
> > "A person shall stop an off-highway vehicle on direction of a peace officer."
>
> The clear intention conveyed, despite the absence of any utterances, was that the accused should stop his ATV. The police, at this point, assumed control over the accused's movement. A failure by the accused to comply would have had legal

> consequences. Section 18 of the **Off Highway Vehicles Act** describes the violation of any provision of the *Act* or regulations to be an offence. I conclude that the accused was detained by virtue of the aforesaid police actions and the obligation imposed upon him by Section 17 of **Off Highway Vehicles Act.**

3. Articulable Cause

[13] However, on these same facts, the learned Trial Judge concluded that this detention was nonetheless justified and not arbitrary for the purpose of s. 9. In reaching this conclusion, Judge Gibson relied on a police officer's common law authority to detain incidental to a legitimate investigation. Specifically he turned to the principle of "articulable cause" as first developed in Canada by the Ontario Court of Appeal in *R. v. Simpson* (1993), 20 C.R. 1 (Ont. C.A.). Simply put, a detention may be justified if, in the context of each individual case and based upon "objectively discernable facts", the peace officer can articulate a reasonable motivation. In considering the facts before him, Judge Gibson concluded that "articulable cause" could mean something less than reasonable grounds for arrest. It could include attempts to prevent an offence before it actually occurred. Beginning at paragraph 22 of his written decision, Judge Gibson concluded:

> [22] I am mindful that the initial detention occurred in a non-adversarial setting. There was no intention to bring the force of the criminal process into operation against the accused. The purpose for the detention was to impart advice to the accused concerning the obligation to not operate his ATV on the highway. Thus, the purpose for the initial detention pertained to an activity regulated by the **Off Highway Vehicles Act**. The detention occasioned by driving the police cruiser in front of the ATV was a reasonable action to ensure that the ATV did not enter upon the highway and to permit the peace officers to impart their advice to the accused about operating his ATV on the highway. The officers were imparting

> information and expressing a concern related to public safety and thus enhancing the public good. Imparting such advice and preventing the operation of the ATV on the highway likely fell both within the scope of the duty imposed on peace officers by statute and recognized at common law. The interference with the accused in this case was minimal. As observed in *R. v. Simpson*, different criteria may govern detentions which occur in a non-adversarial setting than those which involve the investigation of suspected criminal activity.
>
> [23] In conclusion I find that the grounds for stopping the accused in this case were reasonable and clearly expressed thereby meeting the minimum requirement set out in R. v. Wilson. I conclude that the police had articulable cause to stop and detain the accused. This was not a random stop and therefore not an arbitrary detention. Accordingly Section 9 of the **Charter** was not violated.

4. *The Constitutional Question*

[14] Judge Gibson's resort to the common law is significant for the purposes of this Appeal. This allowed him to decide the issue without having to consider the constitutionality of a peace officer's legislative authority to stop ATV operators simply upon direction. The impugned provision is s. 17 of Nova Scotia's *Off Highways Vehicle Act*, R.S.N.S. 1989, c.5, as amended.

> 17 A person shall stop an off-highway vehicle on the direction of a peace officer. R.S., c. 323, s. 17.

[15] Section 18, makes it an offence to disobey such a command:

> 18 Every person who violates a provision of this *Act* or the regulations is guilty of an offence and, except as otherwise provided, is liable on summary conviction to a penalty of not less than twenty-five dollars or more than one thousand dollars. R.S., c. 323, s. 18

[16] As noted in Ground # 4 of his Notice of Appeal, Mr. Boyce attacked this provision as offending s. 9 of the *Charter*. Asserting that it permitted purely random stops, he asked to have it either struck or read down (to at least require

articulable cause). However Judge Gibson's common law finding rendered this analysis moot. At paragraph 24 he noted:

> [24] In anticipation of this Court finding that the detention of the accused was based on a random stop, extensive submissions together with affidavit evidence were presented and adduced respectively regarding the constitutionality of Section 17 of the **Off Highway Vehicles Act** as authority for random stops of off highway vehicles. It certainly appears that Section 17 of the **Off Highway Vehicles Act** was intended to authorize random stops. However, in light of my findings with respect to the articulable cause issue, there is no need for me to determine whether Section 17, if in fact it is authority for random stops of off highway vehicles by peace officers, is justified as such by virtue of Section 1 of the **Charter** as a reasonable limit of the Section 9 **Charter** right.

ANALYSIS

The Detention Issue

[17] Because the Crown has not cross-appealed, Judge Gibson's finding that Mr. Boyce was detained is technically not before me. Nonetheless, I feel compelled to comment on it briefly.

[18] In his testimony lead Officer Pelletier described the encounter this way:

> A. My partner and I were patrolling eastbound on highway seven in Gaetz Brook, Halifax County, Province of Nova Scotia and I noticed an ATV near Pinehill Drive in Gaetz Brook. The ATV was ready to drive on the road. I pulled my police vehicle in front of it to stop it from doing that.
> *[P. 45 (line 17) and P. 46 (lines 1-3) of Tab 3 in Appeal Book.]*
> A. Okay. I told him he wasn't allowed to drive on the road and that's when he told me he was - he lived up the road and I asked him where he lived and he told me he lives at - he lived on Pleasant Drive in Gaetz Brook.
> Q. What, if anything, was said next?
>
> A. By his response I - I noted that he had a slurred speech, Your Honour, and at that time he was asked to sit in the back of my police vehicle.
>
> *[P. 51 (lines 17 - 20) and P. 52 (lines 1-2) of Tab 3 in Appeal Book.]*

[19] On this evidence, if Mr. Boyce was initially detained for the purposes of s. 9, the interruption would have been brief with little inconvenience (before the officers noted signs of impairment).

[20] Judge Gibson rendered his decision in June of this year and less than one month later the Supreme Court of Canada in *R. v. Mann*, [2004] S.C.J. No. 49 provided a thorough analysis of this topic. Specifically at paragraph 19, Iacobucci J. for the majority said this about *detention* in the context of s. 9:

> 19 "Detention" has been held to cover, in Canada, a broad range of encounters between police officers and members of the public. Even so, the police cannot be said to "detain", within the meaning of ss.9 and 10 of the *Charter*, every suspect they stop for purposes of identification, or even interview. The person who is stopped will in all cases be "detained" in the sense of "delayed", or "kept waiting". But the constitutional rights recognized by ss. 9 and 10 of the *Charter* are not engaged by delays that involve no significant physical or psychological restraint. In this case, the trial judge concluded that the appellant was detained by the police when they searched him. We have not been urged to revisit that conclusion and, in the circumstances, I would decline to do so. [Emphasis added]

[21] With this guidance (which would not have been available to Judge Gibson) it appears to me questionable whether Mr. Boyce was, in fact, "detained" at the relevant time.

Articulable Cause

[22] As noted, Judge Gibson nonetheless found the police action to be justified under the common law doctrine of "articulable cause". This investigative authority had its genesis in the United States and, as earlier noted, was first applied in Canada by the Ontario Court of Appeal in *Simpson, supra*. At page 500, Doherty J.A. defined "articulable cause" this way:

> In my opinion, where an individual is detained by the police in the course of efforts to determine whether that individual is involved in criminal activity being investigated by the police, that detention can only be justified if the detaining officer has some "articulable cause" for the detention.
>
> The phrase "articulable cause" appears in American jurisprudence concerned with the constitutionality of investigative detentions. In *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968), the court considered whether a police officer could "stop and frisk" a suspect whom he did not have reasonable cause to arrest. In an analysis that bears a similarity to the Waterfield description of the common law ancillary police power doctrine, the court held at pp. 20-1, that no interference with the individual's right to move about could be justified absent articulable cause for that interference.

[23] Further beginning at page 501, Doherty, J.A. elaborates and suggests caution:

> These cases require a constellation of objectively discernible facts which give the detaining officer reasonable cause to suspect that the detainee is criminally implicated in the activity under investigation. The requirement that the facts must meet an objectively discernible standard is recognized in connection with the arrest power (*R. v. Storrey* (1990), 53 C.C.C. (3d) 316 at p. 324, [1990] 1 S.C.R. 241, 75 C.R. (3d) 1), and serves to avoid indiscriminate and discriminatory exercises of the police power. A "hunch" based entirely on intuition gained by experience cannot suffice, no matter how accurate that "hunch" might prove to be...
>
> Such subjectively based assessments can too easily mask discriminatory conduct based on such irrelevant factors as the detainee's sex, colour, age, ethnic origin or sexual orientation. Equally, without objective criteria detentions could be based on mere speculation. A guess which proves accurate becomes in hindsight a "hunch".

[24] In *Mann, supra*, the Supreme Court of Canada, for the first time, directly accepted the "articulable cause' doctrine, albeit with the new title of "reasonable grounds to detain". The majority's name change is explained by Iacobucci J. at paragraph 33:

> 33 With respect to terminology, I prefer to use the term "reasonable grounds to detain" rather than the U.S. phrase "articulable cause" since Canadian jurisprudence has employed reasonable grounds in analogous circumstances and has provided useful guidance to decide the issues in question. As I discuss below, the reasonable grounds are related to police action involved, namely, detention, search or arrest...

[25] Continuing at paragraph 34, Iacobucci, J. then succinctly set out the guiding principles:

> 34 The case law raises several guiding principles governing the use of a police power to detain for investigative purposes. The evolution of the *Waterfield* test, along with the *Simpson* articulable cause requirement, calls for investigative detentions to be premised upon reasonable grounds. The detention must be viewed as reasonably necessary on an objective view of the totality of the circumstances, informing the officer's suspicion that there is a clear nexus between the individual to be detained and a recent or on-going criminal offence. Reasonable grounds figures at the front-end of such an assessment, underlying the officer's reasonable suspicion that the particular individual is implicated in the criminal activity under investigation. The overall reasonableness of the decision to detain, however, must further be assessed against all of the circumstances, most notably the extent to which the interference with individual liberty is necessary to perform the officer's duty, the liberty interfered with, and the nature and extent of that interference, in order to meet the second prong of the *Waterfield* test.
>
> 35 Police powers and police duties are not necessarily correlative. While the police have a common law duty to investigate crime, they are not empowered to undertake any and all action in the exercise of that duty. Individual liberty interests are fundamental to the Canadian constitutional order. Consequently, any intrusion upon them must not be taken lightly and, as a result, police officers do not have *carte blanche* to detain. The power to detain cannot be exercised on the basis of a hunch, nor can it become a *de facto* arrest.

[26] Applying these principles to the facts at Bar, I conclude that Judge Gibson's decision is sound on this issue. In finding on the s. 9 breach, Judge Gibson erred neither on a question of law nor a question of mixed fact and law. I have reached this conclusion for the following reasons:

[27] As the authorities suggest, the context of each case must be carefully considered. Doherty J.A. in *Simpson, supra* at page 503, emphasized the importance of context and how the nature of the detention should be commensurate to the facts:

> If articulable cause exists, the detention may or may not be justified. For example, a reasonably based suspicion that a person committed some property-related offence at a distant point in the past, while an articulable cause, would not, standing alone, justify the detention of that person on a public street to question him or her about that offence. On the other hand, a reasonable suspicion that a person had just committed a violent crime and was in flight from the scene of that crime could well justify some detention of that individual in an effort to quickly confirm or refute the suspicion. Similarly, the existence of an articulable cause that justified a brief detention, perhaps to ask the person detained for identification, would not necessarily justify a more intrusive detention complete with physical restraint and a more extensive interrogation.

[28] In the case at Bar, the learned Trial Judge considered all the relevant factors (as primarily set out in paragraph 22 of his written decision, *supra*). These included the minor nature of the interruption, "*a non-adversarial setting...the interference with the accused was minimal*"; and the justifiable motive, "*to impart advice...expressing a concern related to public safety and thus enhancing the public good*".

[29] Furthermore, I agree with Judge Gibson that, in these circumstances, the police action was nonetheless justified to *prevent* an offence as opposed to investigating an offence that had allegedly already occurred. In this regard, I am aware that Iacobucci, J. in *Mann, supra* alluded only to the latter category when providing his guiding principles (at paragraphs 34 and 35 *supra)*. Yet the common-law history of justified investigative detention addresses the need for the police to be able to do their jobs within reasonable limits. Thus, in *Mann* the Court adopted the two stage approach originally developed by the English Court of Criminal Appeals in *R. v. Waterfield* [1063], 3 All E.R. 659. Those steps are, firstly, whether the conduct fell within the scope of police work, and secondly, whether the conduct was justified in the circumstances. I refer to Iacobucci, J. beginning at paragraph 24:

> 24 The test for whether a police officer has acted within his or her common law powers was first expressed by the English Court of Criminal Appeals in *Waterfield, supra,* at pp.660-661. From the decision emerged a two-pronged analysis where the officer's conduct is *prima facie* an unlawful interference with an individual's liberty or property. In those situations, courts must first consider whether the police conduct giving rise to the interference falls within the general scope of any duty imposed on the officer by statute or at common law. If this threshold is met, the analysis continues to consider secondly whether such conduct, albeit within the general scope of such a duty, involved an unjustifiable use of powers associated with the duty.

[30] Continuing at paragraph 26, Iacobucci, J. confirmed that a police officer's duty included the prevention of crime:

> 25 This Court has adopted, refined and incrementally applied the *Waterfield* test in several contexts, including the pre-*Charter* lawfulness of random automobile stops under the Rreduced Impaired Driving Everywhere (R.I.D.E.) Program (*Dedman v. The Queen,* [1985] 2 S.C.R. 2); the scope of police power to search incident to lawful arrest (*Cloutier v Langlois*, [1990] 1 S.C.R. 158); and the scope of police authority to investigate 911 calls (*R. v. Godoy,* [1999] 1 S.C.R. 311.
> 26 At the first stage of the *Waterfield* test, police powers are recognized as deriving from the nature and scope of police duties, including, at common law, "the preservation of the peace, the prevention of crime, and the protection of life and property" (*Dedman, supra,* at p. 32). The second stage of the test requires a balance between the competing interests of the police duty and of the liberty interests at stake. This aspect of the test requires a consideration of:
>
> > ... whether an invasion of individual rights is necessary in order for the peace officers to perform their duty, and whether such invasion is reasonable in light of the public purposes served by effective control of criminal acts on the one hand and on the other respect for the liberty and fundamental dignity of individuals. (*Cloutier, supra,* at pp. 181-82)
>
> The reasonable necessity or justification of the police conduct in the specific circumstances is highlighted at this stage. Specifically, in *Dedman, supra,* at p. 35, Le Dain J. provided that the necessity and reasonableness for the interference with liberty was to be assessed with regard to the nature of the liberty interfered with and the importance of the public purpose served
>
> [Emphasis added]

[31] To this basic approach the Court in *Mann,* adopted the "further gloss" provided by *Simpson, supra*.

[32] If the police action on the evening in question amounted to a detention, they nonetheless had "reasonable grounds" to act as they did. There was no s. 9 *Charter* breach.

DISPOSITION

[33] In light of these findings, like Judge Gibson, it is unnecessary for me to consider the constitutionality of s. 17 of the *Off Highways Vehicle Act*. Nor, in the circumstances, is it necessary for me to embark on an analysis under ss. 1 and 24 of the *Charter*.

[34] For all these reasons, I dismiss the Appeal.

Michael MacDonald
Associate Chief Justice