

V The Guilty Pleas and Plea Bargaining

The hearing of the oral evidence of witnesses and cross-examination is a time-consuming process not only in committal proceedings, but also, naturally, at the trial of a criminal case. At trial, the prosecution may produce additional witnesses; witnesses for the defence will also be heard whereas they are generally absent from committal and both sides may conduct vigorous and lengthy cross-examinations. In the following chapter there will be an examination of the inroads that have been made into the viva voce evidence rule; the present section, however, is concerned with the elimination of the need for proof by means of a straightforward or negotiated guilty plea.

The inherent advantages of the disposal of cases by guilty pleas were outlined in Chapter II: where a plea of guilty is tendered and accepted, the hearing is expedited due to there being little or no fact finding or arguments on points of law or procedure and no jury deliberations. In a summary cause disposed of by guilty plea the accused appears before the court, satisfies the judge that his plea is voluntary and that he is aware of his legal right to have the case against him proved beyond a reasonable doubt, and then he is sentenced. Many of these advantages, however, may be lost in relation to indictable offences where the plea is not taken until the conclusion of committal proceedings. Traditionally, whether or not the accused intended to challenge the case alleged, the preliminary inquiry still took place with the hearing of prosecution witnesses and a decision by the judge as to whether or not a prima facie case existed. This did provide a measure of protection against an accused pleading guilty, for whatever reason, where the prosecution's case was too weak to support the facts. The argument can be made that this safeguard should remain, given that the existence of plea bargaining may produce involuntary or coerced pleas of guilt. This is one possible mechanism for assuring that in the circumstances of a particular case there is at least prima facie evidence to justify a guilty plea. Nevertheless, throughout the Commonwealth the screening function of preliminary inquiries is on the decline whereas discovery is on the increase. One of the perceived advantages of discovery is that it encourages guilty pleas in those cases where the prosecution's evidence is strong.¹ Current practice therefore promotes guilty pleas while neglecting in the same measure to provide safeguards against potential abuse.

In those jurisdictions where written statements may now be tendered in committal proceedings, committal is expedited for the defendant who intends to plead guilty:² the hearing is either waived on the basis that all

evidence is in written form, or the magistrate makes a decision as to the viability of the case on the basis of the written statements. Little or no court time is used. Some countries have gone further by allowing a plea of guilty to be lodged in advance of or at the preliminary hearing which in many cases will not only save the time of the judiciary and the court, but also of the prosecution in preparing and lodging written statements in the statutory form. Where full committal proceedings are still the norm, the savings in time by allowing guilty pleas to be lodged at this earlier stage are even more substantial.

As far back as 1943, the South Australian Parliament enacted an amendment to the Justices Act providing that where a defendant appeared before a special magistrate, or two or more justices on a preliminary inquiry charged with a "minor indictable offence",³ the defendant at any stage of the proceedings, whether any statement had been taken from witnesses or not, could plead guilty to the offence or any of the offences charged against him. Thereafter, the court was to treat and dispose of the case summarily.⁴ This provision is still in operation.

A new procedure was introduced in Uganda in 1962⁵ which enabled certain magistrates to convict a person on his own plea of guilt on a charge of manslaughter or rape, or of an attempt to commit such offence or of aiding, abetting or inciting the commission of it. Unlike the South Australian procedure, this covered a more serious class of offences. In view of this, minor procedural protections were also enacted. In the case of manslaughter, the consent of the Director of Public Prosecutions was necessary before such a conviction could be made, and in any case, if the magistrate considered that the interests of justice demanded it, the accused could be provided with legal advice before being called upon to plead.⁶ The provision of legal aid, however, was purely within the discretion of the magistrate, and given the seriousness of the charges involved and the sentences that could be imposed (the defendant was to be sent to the High Court to be sentenced) reservations as to the fairness of such a procedure were expressed.⁷ Uganda has since reversed its position on this issue and preliminary proceedings are now mandatory for all offences not triable by a magistrates' court, notwithstanding that the accused intends to plead guilty to the charge.⁸

Other jurisdictions which have passed legislation in this area have restricted the right to plead guilty in serious cases in some respects in order to provide appropriate protections for the defendant. In New Zealand, the Summary Proceedings Amendment Act, 1976, permits a plea of guilty to be received before or during a preliminary hearing but only where

the defendant is legally represented.⁹ In New South Wales such a plea may only be tendered where a person is charged with an indictable offence not punishable by life imprisonment,¹⁰ and the decision to accept the plea is within the discretion of the justice.¹¹

When a guilty plea is not lodged timeously, its advantages are substantially reduced. A not guilty plea which, near the date set for trial, or even on the actual day of trial, is changed to a plea of guilty results in all the time-consuming work of making arrangements for convening the trial having been wasted, including the time of witnesses, who will have been put to considerable inconvenience.¹² In addition, court schedules will be upset: where a guilty plea is received at short notice, the ensuing hearing will be much shorter than anticipated, but it is unlikely that other cases can be called on for hearing at such short notice. The court will remain empty while cases pile up outside the door.

Defendants often delay tendering a guilty plea until they have been able to assess the strength of the prosecution's case. If this information is not forthcoming at the outset, the decision is retarded. Hopefully, those developments providing or encouraging early or extensive discovery will help to counter this difficulty. The accused may also withhold his plea of guilty to give himself time to prepare a favourable picture of himself to present to the judge at sentencing. By pleading not guilty initially, he provides himself with a breathing space in which he can, for example, get a steady job, make restitution, obtain good character references and so on. These factors may be taken into account by the judge and the ultimate result, the sentence, may be more favourable to the accused.¹³ It is also conceivable that in the light of more widespread knowledge of the existence of plea negotiation, an accused and his counsel will "hold out" in the hope of securing a more favourable "bargain".

A measure designed to avoid the problems of late pleas tested in Scotland was the requirement that an accused person who has pleaded not guilty should renew his plea four days before the date fixed for the trial. It was thought that while this necessitated another brief appearance in court, this might at least have the effect of preventing the unnecessary attendance of witnesses on the day of trial. This was tried extensively in the courts in Glasgow but was a complete failure.¹⁴ An alternative procedure which has been suggested is that use should be made of continuations (remands, adjournments) without plea rather than pleas of not guilty which result in the fixing of trials which are eventually withdrawn.¹⁵ Alternative

measures which have been considered in Scotland at least involve the invoking of sanctions against a defendant where there is a late change of plea or where a case proceeds on a plea of not guilty but the court is of the opinion that the defence was of no substance. It was concluded, however, that if the first of these measures were introduced it would result in more cases going to trial in order to avoid the sanctions; and the second proposal could be interpreted as putting a premium on pleas of guilty, offending against the principle that an accused is entitled to require the Crown to prove its allegation and would also involve a reciprocal right to expenses against the Crown in the event of an acquittal.¹⁶ Encouraging guilty pleas and the timely lodging of such must be more subtle than coercive and must represent the actual wishes of the accused.

There has existed in Scotland since 1887 a procedure very favourable to an accused who does tender an early guilty plea: it is known as "section 31 procedure".¹⁷ This provides that in solemn procedure (roughly equivalent to trial on indictment) an accused person who desires to have his case disposed of quickly and intends to plead guilty is entitled to give written notice to this effect, through his solicitor, to the office of the Crown prosecutor. This notice is given by letter, and the present law requires that it be signed by the accused's solicitor. An indictment in short form (it will not include a list of witnesses or productions) is thereafter served on the accused along with notice to appear in the lower court at an early date. Sentence may be imposed by the sheriff in appropriate cases; in others he remits the case to the High Court for sentence.¹⁸ At the present time this expedited procedure is only available where the accused is legally represented. The Thomson Committee on the Criminal Procedure of Scotland recommended that this restriction be lifted and the indications are that this recommendation will be implemented.¹⁹ As a noted commentator on Scots law has observed, this procedure does offer subtle inducements for the accused detained in custody to plead guilty: the length of any pre-trial detention is curtailed considerably and the possibility exists that in a limited number of cases the sheriff will not remit the case to the High Court in circumstances where the Crown might be expected to fix a trial in that court. This could result in a lighter sentence for the accused.²⁰

The invitation, offer and acceptance of inducements to plead guilty through what are commonly known as plea negotiations probably exist in some form or another in most Commonwealth jurisdictions even though they may not be officially recognized.²¹ In South Australia, for example, an accused may bargain with the Crown to accept a plea of guilty to one charge and

withdraw others or to accept a plea to a lesser crime than that charged. But the bargain cannot include as a term the fact that the prosecutor will make a plea for any particular sentence to be passed.²² In Canada on the other hand, the practice of the prosecutor "speaking to sentence" as part of an agreement with the accused seems to be quite widely accepted.²³ A practice exists in Jamaican Resident Magistrates' Courts whereby a clerk of court may accept a plea of guilty to the lesser of two offences;²⁴ in Kenya, although the process of plea bargaining has not been statutorily formalised, in practice there exists an informal process whereby a plea to a lesser offence may be accepted, or less frequently, charges withdrawn in return for a guilty plea.²⁵

The ethical concerns surrounding plea bargaining are not the real issue here, rather the point to be examined is the extent to which it has been recognised as a legitimate practice having a function to play in expediting the hearing of criminal cases.

Above-board acceptance of plea bargaining as part of the criminal justice process will ease the pressure of court congestion. Acceptance requires the earnest efforts of the bar and bench, and perhaps of the parliament and the public, to set realistic guidelines for the case of the participants in the criminal process. Attorneys and judges must have certain knowledge of which forms of plea bargaining are acceptable and which are not. Perhaps the development of different forms of plea bargaining is required to suit local conditions. The crucial decisions must be whether the judiciary will be an active participant in the process. It is crucial because judicial integrity is at stake. The "cherished image" of the impartial arbiter in the battle between the Crown and the accused may be tarnished when the judge descends into the ruck.²⁶

The authority for accepting a lesser plea already exists in the legislation of many Commonwealth countries.²⁷ Some of these provisions are quite general, stating little beyond the fact that a lesser plea may be accepted. In England, for example, section 6(1)(b) of the Criminal Law Act, 1967, provides that where a defendant is arraigned on an indictment for any offence, and can lawfully be convicted on such indictment of some other offence not charged in such indictment, he may plead not guilty to the offence charged but guilty of such other offence, although it is always in the discretion of the judge to refuse to allow a plea to a lesser offence. What exactly are the lesser offences for each charge are not specified. In contrast, some other jurisdictions specifically enumerate the lesser included offences which may be accepted for each offence. In Tasmania,

Chapter XXXIX of the Criminal Code Act 1924-77 sets out the powers of conviction upon particular indictments. A general provision enables the accused to plead guilty to "any other crime of which he might be convicted upon such indictment".²⁸ The Act further provides that upon an indictment for murder, for example, an accused may be convicted of manslaughter; concealment of birth; causing the death of child before birth or infanticide.²⁹ Upon an indictment for stealing; obtaining property by a false pretence; cheating or receiving stolen property, the accused may be convicted of any of such crimes respectively.³⁰

Where the lesser included offences are specified a measure of guidance is provided for the party charged with the responsibility of accepting or rejecting a plea of guilty to a lesser offence. Additionally, in some jurisdictions, judicial consent is required before such a plea can be accepted;³¹ in others it is the prosecutor's consent that is necessary.³² The recognition of plea bargaining contained in legislative measures such as these is at most implicit and very little guidance is given to those involved in plea bargaining. Fortunately, the legitimacy or otherwise of plea bargaining practices has been addressed more explicitly in a small number of key judicial decisions which have had a notable impact on the practice of plea negotiation.

In R v. Turner,³³ a case which in itself had little to do with plea bargaining, the English Court of Appeal took the opportunity to make some general observations and guidelines on the subject:

- (1) counsel must be free to advise a plea of guilty if he thinks that that is in his client's best interests, and to advise it strongly. He is entitled to point out that such a plea showing an element of remorse is a mitigating factor which may reduce sentence. He must emphasize that his client must not plead guilty unless he has committed "the acts constituting the offence charged";
- (2) the accused must have complete freedom to choose his plea;
- (3) there must be free access between counsel and judge, but any discussion must be between the judge and counsel on both sides. Lord Parker C.J. thought that the discussion should be in private in case counsel might want to discuss some mitigating factors like illness, which should not be made known to the accused, or might wish to discuss whether it would be proper to accept a plea to a lesser offence;
- (4) the judge may say that whatever the accused pleads, the sentence will or will not be of a particular kind, such as probation or imprisonment. He should never indicate that the sentence will be severer if the accused goes

to trial. This would amount to undue pressure on the accused, depriving him of a free choice;

(5) defence counsel should disclose to his client any discussion which has taken place with the judge on sentence.

The Turner decision alleviated the former discrepancies in practice, especially among a minority of over-zealous barristers (and on occasion, judges) who sought to expedite justice by encouraging a guilty plea without due consideration of the case in question. The guidelines in Turner expressed in cogent lucidity the mode of conduct to be observed both in approach and substance, to plea bargaining.³⁴

In the Bahamas, due to the fact that section 142 of the Criminal Procedure Code provides that the practice of the Supreme Court in its criminal jurisdiction shall be assimilated, as far as circumstances permit, to the practice of the High Court of Justice in England, plea bargaining is officially recognised and acceptable since it was sanctioned in Turner.³⁵

In contrast, a negative relationship between the Turner decision and the practice of plea bargaining has been put forward in the Australian state of Victoria.³⁶ Since the early 1970s the county courts in Victoria have experienced a marked decline in guilty pleas from 75.4 per cent in June 1971 to 61.8 per cent in December 1976, with more people exercising their right to trial by jury. It is felt that changes in plea bargaining practices in Victoria in the early part of the decade may well have contributed to the decline in guilty pleas. Despite the qualified approval given to plea negotiation in Turner, the case created a certain amount of controversy and criticism in legal circles in Australia. It is argued that the Victorian judges, especially county court judges, decided that they would discourage the practice, which would explain to some degree, the declining number of guilty pleas over the period studied. Failure of defendants to get some idea of the possible penalty could result in decisions to go to trial.³⁷ This trend was compounded by the Australian case of Bruce v. The Queen³⁸ which unilaterally condemned the practice of plea bargaining and is seen as having had a deterrent effect on the practice of plea bargaining.³⁹ Thus, court decisions have had a significant impact on the use of guilty pleas to expedite the hearing of criminal cases.

A novel situation in relation to plea bargaining exists in Ontario. There, in 1972, the government became involved in promoting and regulating plea negotiations by issuing guidelines to the Crown Attorneys who prosecute criminal cases in the courts and whose consent is a necessary prerequisite

for a plea to a lesser offence to be accepted in court.⁴⁰ These have no statutory force, of course, but their persuasive value is considerable.⁴¹ It is worth setting out the nine principles in full:

(1) The proper administration of justice is the paramount consideration in all plea discussions, and, as with all the duties of the Crown Attorney, due regard must be had for the rights of the accused, the protection of the public and the interest of the victim in accepting the plea of guilty to a lesser or included offence.

(2) The Crown Attorney should do nothing to compel a plea of guilty to a lesser number of charges or a lesser or included offence.

(3) The Crown Attorney should indict only on those charges on which he intends to proceed to trial or, in trials in the Provincial Court (i.e. the lower court), the Crown Attorney should, with leave of the court, withdraw those charges on which he does not intend to proceed to trial.

(4) The Crown Attorney should not consent to the acceptance of a plea of guilty to an offence which has not been committed.

(5) The Crown Attorney should not consent to the acceptance of a plea of guilty to a charge that cannot be prosecuted because it is barred at law.

(6) In all discussions with defence counsel, the Crown Attorney must maintain his freedom to do his duty as he sees fit. Nothing should be said or done to fetter the freedom of the Crown Attorney and the defence counsel.

(7) The Crown Attorney may state to defence counsel the view he may give if asked by the presiding judge to comment on the matter of sentence. The Crown Attorney should not agree to a specific sentence. He may draw the attention of the presiding judge to any mitigating or aggravating circumstances that may appear to him to be relevant and may make submissions concerning the appropriate form and range of sentence. However, he should take the clear position that the matter of sentence is strictly for the judge and that any statement that is made cannot bind the Attorney General in the exercise of his discretion whether to appeal against a sentence or not.

(8) The Crown Attorney always should consider himself as agent of the Attorney General and, as such, responsible for the proper administration of justice.

(9) Apart from exceptional circumstances neither the Crown Attorney nor the defence counsel, either alone or together, should discuss with the judge matters bearing on the exercise of the judge's discretion, in the judge's chambers or any place other than in open court. Where attendance in the judge's chambers is dictated by the circumstances, the Crown Attorney should always request that a court reporter be present to take down the full discussion

which should form part of the record of the case. All representations to the judge on which he is to base the exercise of his discretion concerning a plea of guilty should be made in open court.⁴²

Other jurisdictions which have a public prosecution service might consider similar guidelines with appropriate modifications according to the desired format of plea bargaining. For those countries which have a system of private prosecutions, guidelines addressed to prosecuting counsel may not be as effective. More general statements such as the one contained in Turner may have to suffice, although some thought should be given to providing some form of guidelines to police prosecuting counsel where they exist.

The guilty plea process and its encouragement through plea negotiation is a useful way to expedite certain criminal cases, but extreme care must be taken not to pursue this end with a total disregard for the means involved. The ultimate decision to plead guilty must be that of the accused. Recognising and regularising the plea bargaining process could make it a fairer one with more limited possibilities of abuse. Of the different methods which have been reviewed here it would appear to the author that the type of system prevailing in Scotland - a legal rule providing a right to an expedited hearing and other peripheral benefits available to all serious offenders - is a most appropriate one. The procedure is on a formal rather than an ad hoc basis, the latter being susceptible to wide variations in practice; it is available to a wide class of offenders as a group whereas pressure to plead guilty is more keenly felt when a procedure proceeds on an individual basis, and the "inducement" is a similar one for all accused.

Perhaps the most useful long-term measure we can pursue in this area is to scale down our expectations of the guilty plea process and plea bargaining. It must be realised that it can only relieve the problems of the criminal courts to a limited extent and that other ameliorative measures must be sought,

Footnotes

¹J. Ll. J. Edwards, G.O.W. Mueller and G. Williams, "Preliminary Investigation by Magistrates in Great Britain and Canada" in G.O.W. Mueller and F. Le Poole-Griffiths, Comparative Criminal Procedure (New York, 1969), pp. 55-84 at p. 59.

²T.F. O'Brien, "Committals for Trial", (1973), 47 Law Institute Journal 33.

³The Justices Act Amendment Act, 1956, No. 57 changed the wording to "an offence cognizable by a special magistrate or justices under section 120", but the scope of this provision remains substantially the same.

⁴Justices Act, 1921-78, section 106a, inserted by Justices Act Amendment Act, 1943.

⁵Ordinance No. 17 of 1962, inserting section 216A into the Uganda Criminal Procedure Code.

⁶H.F. Morris and J.S. Read, Uganda: The Development of its Laws and Constitution (London, 1966), pp. 265-66.

⁷B. Slattey, "Drafting Criminal Charges", (1974), 7 East African Law Review 275.

⁸Uganda, Magistrates' Courts Act, 1970, No. 13, as amended by Decree No. 17 of 1971.

⁹No. 169, 1976, section 15, inserting a new section 153A.

¹⁰This exclusion of the more serious offences also extends into the arena of the trial: some countries do not allow guilty pleas to be tendered at the trial of these offences. For example, Lesotho's Criminal Procedure and Evidence Proclamation (No. 59 of 1938) section 235(1) as inserted by section 4 of the Criminal Procedure and Evidence (Amendment) Order (No. 2 of 1939) provides that guilty pleas will not be received where the charge is one of murder. In Canada it is the practice not to allow guilty pleas where the offence entails mandatory life imprisonment.

¹¹New South Wales, Justices Acts, 1902-1978, section 51A, inserted by Act No. 16, 1955, section 7(1)(a).

¹²A survey of pleas in the county courts of Victoria found that 42 per cent of cases listed as trials turned into pleas of guilty - J. Willis and P. Sallman, "Criminal Statistics in the Victorian Higher Courts: A First Glimpse of the Possibilities", (1977), 51 Law Institute Journal 498, 570 at p. 504.

¹³W.T. Westling, "Plea Bargaining: A Forecast for the Future", (1976), 7 Sydney Law Review 424 at p. 425.

¹⁴Scotland, Committee on Criminal Procedure in Scotland (the Thomson Committee), Criminal Procedure in Scotland (second report) (Edinburgh, 1975), Cmd. 6218, para. 20.04.

¹⁵"Response of the Council of the Law Society of Scotland to the Questions submitted by the Committee on Criminal Procedure under the

Chairmanship of Lord Thomson", (1972), Journal of the Law Society of Scotland 7 at p. 11.

¹⁶Id. at p. 11 and Thomson Committee, supra footnote 14 at paras. 20.05-20.06.

¹⁷Section 31 of the Criminal Procedure (Scotland) Act, 1887, now section 102 of the Criminal Procedure (Scotland) Act, 1975, c.21.

¹⁸R.W. Renton and H.H. Brown, Criminal Procedure According to the Law of Scotland, (4th ed. by G.H. Gordon) (Edinburgh, 1972), paras. 8.01-8.02.

¹⁹Criminal Justice (Scotland) Bill, 1979, section 21. This Bill fell when a general election was called in the spring of 1979.

²⁰G.H. Gordon, "Plea Bargaining", 1970, Scots Law Times (News) 153. In other jurisdictions a much more restricted scheduling advantage is given to those cases where there is a guilty plea in that on any given court day these cases will be disposed of before the contested cases - see, for example, Great Britain, Home Office Circular No. 97/1978, (1978), 128 New Law Journal 756 at p. 757.

²¹See, for example, P.A. Sallman, "Criminal Justice: a Systems Approach", (1978), 11 Australia and New Zealand Journal of Criminology 195, where the author discusses the recent Australian decision in Bruce v. The Queen, (unreported, High Court of Australia, May 21, 1976). In that case, the practice of plea bargaining was condemned out of hand and Sallman observes that this creates a wide divergence between official recognition of the position and the reality of what is a daily fact of life in and out of Australian courts.

²²South Australia, Criminal Law and Penal Methods Reform Committee, Third Report, Court Procedure and Evidence (Adelaide, 1975), pp. 117-118.

²³For example, R. v. MacArthur, (1978), 15 Newfoundland and Prince Edward Island Reports 72 (P.E.I. Court of Appeal) at p. 74: "It cannot be stated that there is anything wrong in Crown counsel making a submission to the court as to the sentencing of the accused." In Attorney-General of Canada v. Roy, (1972), 18 Criminal Reports New Series 89 (Quebec Court of Queen's Bench), however, it is stressed that the judge is not bound by the suggestions of the Crown in this respect.

²⁴Correspondence to author from Jamaican government n.d.

²⁵Correspondence from Attorney General's Chambers Nairobi, dated March 5, 1979.

²⁶W.T. Westling, supra footnote 13 at pp. 430-31.

²⁷In Scotland there is also authority for accepting a plea of guilty to one of a number of charges contained in an indictment - Criminal Procedure (Scotland) Act, 1975, section 61(1).

²⁸Section 355(1)(a) of the Tasmanian Criminal Code Act, 1924-77.

²⁹Id. section 333.

³⁰Id. section 338.

³¹England, Criminal Law Act, 1967, section 6(1)(b). This requirement is probably more common in those jurisdictions which, like England, do not have a professional prosecuting service.

³²Canadian Criminal Code, R.S.C., 1970, c. C-34 section 534(4); Sri Lanka, The Administration of Justice Law, No. 44 of 1973, section 204; New South Wales, Crimes Act, 1900-1977, section 394A and Queensland, Criminal Code Act, 1899-1978, section 598.

³³[1970] 2 All E.R. 281; [1970] 2 W.L.R. 1093. For commentary see G.H. Gordon, supra footnote 20.

³⁴R.D. Seifman, "The Plea Bargaining Process: Trial By Error?", (1977), 127 New Law Journal 551 at p. 552.

³⁵Correspondence from the Legal Department, Nassau, Bahamas, dated 9th May, 1979.

³⁶J. Willis and P. Sallman, supra footnote 12.

³⁷Id. at p. 504.

³⁸Supra footnote 21.

³⁹J. Willis and P. Sallman, supra footnote 12 at p. 504. See also P. Sallman, "The Guilty Plea as an Element in Sentencing", (1980), 54 Law Institute Journal, 105, 185.

⁴⁰Ontario, Ministry of the Attorney General, Memorandum to all Crown Attorneys, "Principles Applicable to Plea Discussions", originally issued May 25, 1972.

⁴¹E.C. Gerhart, "Plea Negotiations", Crown's Newsletter, January 1979, p. 2.

⁴²In a more recent affirmation of these principles it was stressed that expediency in reducing workload is not acceptable as a reason for accepting a plea to a lesser offence or lesser number of offences, and that the reasons for accepting a plea to a lesser offence or lesser number of offences should be stated in open court - D.R. Stuart, "Annual Survey of Canadian Law: Part 3 Criminal Law and Procedure", (1977), 9 Ottawa Law Review 568 at p. 645.