LXAR ARCHER, A.G. A dichotomy of judicial interpretation.

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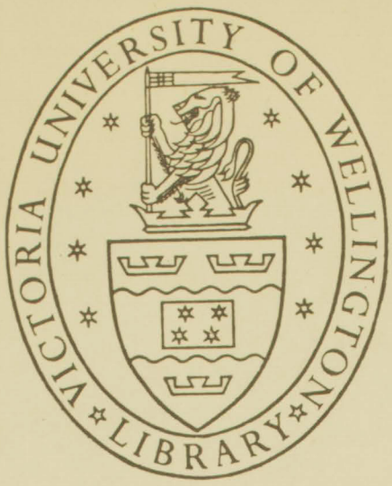

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A dichotomy of judicial interpretation; Ministry of Transport v Payn and the limits upon traffic officers powers.

Submitted for the LL.B. (Honours) Degree
at the Victoria University of Wellington.

1 September 1977

INTRODUCTION

In 1968 Parliament introduced breath test - blood alcohol legislation into the Transport Act 1962. Since then the whole area has been the subject of immense conflict, criticism and manipulation as numerous cases contest the meaning of the words in the statute. One particular area that has recently become a focus for attention is that of powers of traffic officers. More specifically, it concerns what powers traffic officers have to enter upon private property and administer the provisions of the Transport Act 1962. This encompasses general enquiries by officers, the administration of breath tests, and later, blood tests, and powers of arrest.

A number of recent decisions have emerged from the courts on this issue. Such cases include Kelly v Lower Hutt City[1]; Police v Ward[2]; Woodward v Auckland City Council[3]; Payn v Ministry of Transport[4]; Allen v Napier City Council[5]; and Ministry of Transport v Payn[6]. There are a few variations in the facts of the cases, which enable some fine distinctions to be drawn between some of them, but broadly they exhibit the same kind of conduct and issues. However, the affinity of the issues is not an aspect in the review of the cases by the courts. The judgments not only lack consensus and certainty, but also conflict, with one another. This has been the result of three factors.

The prevalent factor has been the failure of the courts to adopt a clear approach with the legislation. The judges assume either one of two general interpretations or constructions, that explains their decision of the case. There is a broad approach in which the

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(1) [1972] N.Z.L.R. 126.
(2) [1973] 2 N.Z.L.R. 148.
(3) (Supreme Court, Auckland, 10 May 1976, Henry J., M491/75).
(4) (Supreme Court, Auckland, 16 July 1976, Barker J., M199/76).
(5) (Supreme Court, Napier, 2 August 1976, Beattie J., M67/76).
(6) (Court of Appeal, 11 March 1977, C.A. 127/76).

judge's outlook could be described as philosophical. Here the private rights of the individual are of particular importance and the legislation is construed accordingly. Alternatively there is a narrow approach which involves looking at the purpose of the legislation, reflecting that purpose in the salient section(s) and applying that directly to the case at hand without giving too much attention to the broader, philosophical issues. As will be seen, where this latter approach is adopted, the powers of traffic officers are deemed as paramount to the working of the Act, and as such, the courts are reluctant to impose restraints.

A second factor is the Transport Act itself. It will be observed later that this piece of legislation is ambiguous in its silence on the powers of traffic officers. This lends itself to differing interpretations and conflicting constructions.

The other factor is the vital and delicate constitutional questions and interests involved. On the one hand there is the interest of the traffic authorities, that their powers be free from limitations and restraints so as to enable their officers to carry out the intention of the legislature effectively - the reduction of the road toll. The policy behind this interest is that the courts should assist traffic officers, as far as possible, to follow motorists who evade them by seeking refuge upon private premises. On the other hand there are the interests of the individual; the claim being that individuals should be able to maintain their right of privacy and their civil liberties in general. Furthermore, the protection of these interests are seen as essential to ensure personal independence and freedom from official harrassment.

Before turning to the recent cases, and the Court of Appeal's review of the whole issue in the case of Ministry of Transport v Payn , attention must firstly be drawn to the provisions of the Transport Act.

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THE LEGISLATIVE PROVISIONS OF THE TRANSPORT ACT 1962

Section 58 of the Act provides an offence where a person drives or attempts to drive a motor vehicle while the proportion of alcohol in his blood exceeds the statutory limit - 100 milligrammes per 100 millilitres of blood. Section 58A(1) authorises traffic officers to require persons to provide "forthwith" a specimen of breath for a breath test. The traffic officer must have a "good cause to suspect" the commission of an offence against sections 55, 58 (1)(a) and 58 (1)(b).(7) Subsections 1A, 1B, 1C, of Section 58A authorise breath tests where the traffic officer suspects that a person involved in an accident has been drinking or has committed one of the offences in subsection (1).

It is seen that the taking of action by traffic officers pivots on the attainment of "good cause to suspect". Basically, this requirement means a traffic officer must be able to demonstrate that he had a suspicion founded on reasonable grounds. Whether "good cause to suspect" exists or not is to be determined on the whole of the facts of the case and a driving fault is not mandatory.(8) "Good cause to suspect" has been held to mean no more than a reasonable ground for suspicion upon which a reasonable man may act.(9) The aquisition of "good cause to suspect" and the subsequent demand for a breath test may take place notwithstanding that the driving had ceased before either steps were taken.(10) "Good cause to suspect" may be based on a heresay report from another officer.(11) The word "forthwith" in the phrase "provide forthwith a specimen of breath" means as soon as reasonably practicable.(12)

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(7) S.55 - causing injury while driving over the blood alcohol limit or whilst having improper control.
S.58 (1)(a) driving whilst over the blood-alcohol limit.
S.58 (1)(b) driving when under the influence of dring or drug to such an extent that are incapable of having proper control.

(8) Fletcher v Police [1970] N.Z.L.R. 702.

(9) Ministry of Transport v von Hartizch 1972 N.Z.L.R. 928.

(10) Police v Bradley [1974] 1 N.Z.L.R. 113.

(11) Police v Cooper [1975] 1 N.Z.L.R. 216.

(12) Chesham v Wright [1970] N.Z.L.R. 257.

The next stage of the screening process is governed by subsection (2) of Section 58A. If it appears to the traffic officer that the breathalyser indicates a positive reading, or if the person fails or refuses the test, he may then require that the person accompany him for a blood test. Non-compliance with this enables the traffic officer to arrest under subsection(3). Section 58C (1) authorises a traffic officer to arrest a person without warrant who fails or refuses to give a specimen of blood for testing. Other provisions in the Act give traffic officers further powers of arrest(13) but none relate specifically to the legality of traffic officers administering the provisions of the Act on private property. The Legislature has omitted to include any express provisions concerning traffic officers' powers "off the road".

The immediate implication of this is the absence of any statutory authority that is available to justify officers' actions on private property. However, over the past five years, traffic officers have been able to enter private property, even private premises, to administer the provisions of blood-alcohol legislation, without control by the courts. Judicial decisions have given officers the power to enter and remain on a person's private property. The question arises as to why they have been allowed this right, when, as has been observed, the legislation makes no mention of such rights.

The whole issue of traffic officers powers on private property came before the Court of Appeal in the case Ministry of Transport v Payn. The facts before the court, although in some small dispute, were broadly as follows. Payn collided with a parked car on his way home. With the owners of the parked car, Payn exchanged names, addresses and insurance companies. At the owners mention of calling the traffic authorities Payn abruptly left and walked home. The two traffic officers who arrived at the scene were given an account of what happened. From there the officers went to the respondent's address where Payn's wife opened the door to their knocking. Payn appeared and told the traffic officers that he had been drinking since the accident and produced empty bottles of beer. With the

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(13) Sections 63, 66, 68B and 68D.

information from the owners of the car, their own observations of the accident and, of Payn's condition, the traffic officers formed "good cause to suspect" Payn had been driving with an excess blood alcohol level. Consequently they "asked" him for a specimen of his breath. Payn's reaction and behaviour, that effectively ignored the request, amounted to a refusal. Payn then questioned the traffic officer's right to be on his property and told them to leave. Having obtained confirmation from headquarters, the traffic officers returned and renewed their requests. After some period of delay and general unco-operativeness by Payn, the traffic officers then deemed his behaviour as a refusal, and as a positive test, then required that he accompany them for a blood test. Payn again disputed their right to trespass, and after further comments and delay, the traffic officers entered the house and arrested him.

RECENT CASE DEVELOPMENTS

Up until Payn the cases had each been drawing independant and different lines as to the extent of traffic officers' powers. This illustrates the effect of different approaches being adopted in each case. The Court of Appeal in Kelly v Lower Hutt City considered that officers' powers were not restricted to "on the road" and extended to other places including private property. The court construed the act such that traffic officers must have licence or the owner's consent before the exercise of powers on private property are legal.

Cooke J. in Police v Ward thought that the absence of any legislation on the matter was because it was being taken for granted that private rights of property were being overridden. After a distinctly narrow approach his Honour concluded,

> "In general Parliament and the Courts still look upon the Englishman's, or New Zealander's home as his castle, but even this deeply-rooted idea has to yield to the dictates of the road toll". (14)

His Honour held that a traffic officer may insist upon entering private property, notwithstanding that he had been refused permission to enter or had been ordered off by the occupier. Furthermore Cooke J.

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(14) [1973] 2 N.Z.L.R. 418. 429.

considered that within certain limits and subject to certain safeguards, a right of forcible entry may exist. The facts show that the traffic officer had been in "hot pursuit", and the respondent had swerved off the road into his father's place. Cooke J. placed emphasis on the statutory requirement that the officer acquire "good cause to suspect", before the powers arise. In this case Cooke J. has entrusted traffic officers with extensive and wide reaching powers.(15) His contentious decision has placed the traffic officer in a synonymous position with police constables, who obtain their authority explicitly from the Crimes Act 1962.(16)

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(15) It is of note that the recent case of Ministry of Transport v Quirke (Supreme Court, Auckland, 21 April 1976, White J. M82/75) similarly appeared very reluctant to impose any form of restraint upon traffic officers. The issue before the court involved the legality of the exercise of powers when the traffic officer was not in uniform, and had no evidence of his authority. The decision of White J. meant that a traffic officer need not be in uniform or in possession of any warrant or other evidence before he is able to enforce the blood-alcohol provisions. In granting leave to appeal (still pending) Jeffries J. said,

> "If the decision of White J. is correct in law then it is conceivable that enforcing traffic authorities would not in the future conduct themselves as they have done in the past when it seems it was thought necessary to have the requisite evidence of authority to enforce the blood alcohol provisions."

(16) S. 315 - gives powers of arrest without warrant.
S. 317 - authorises entry by force to arrest if (a) that person is found committing any offence punishable by imprisonment and is in hot pursuit (b) has good cause to suspect that person has committed any such offence.

In Woodward v Auckland City Council the issue of officer's powers on private property and in private premises came before Henry J. His honour distinguished Ward and held that the traffic officer was a trespasser, and as such not entitled to exercise his powers on the premises without an express invitation from the occupier.

At this stage Payn came before Barker J. in the Supreme Court. Barker J., in disapproving of the decision in Ward, considered that powers of entry upon private property only existed in cases of "hot pursuit". His honour went on to apply Woodward and held that at the material time the traffic officers exercised the provisions of the Act, they were trespassers.

Whilst Payn was pending its appeal hearing, the case of Allen v Napier City Council came up for decision. Beattie J. stated at the outset that the appeal raised the question whether Police v Ward or Payn should be followed. Beattie J. made it clear that he considered Barker J's. decision as erroneous. His honour stated that it was not a question of hot pursuit but rather whether the traffic officer had "good cause to suspect" and whether he acted "forthwith". He expressly follows Cooke J. in Ward holding that the line should be drawn at the point where the traffic officer ceases to have "good cause to suspect".

From this brief case history review it is clear that the whole area is unsettled and variant from case to case. In it we see Kelly and Ward adopting the narrow approach and extending the powers of traffic officers.(17) Woodward and Payn (Supreme Court) show a desire to control these powers, but now Beattie J. in Allen has expressed disapproval of that action and reasserted the narrow construction. Hence traffic officers's powers remain free from limitations or restraint.

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(17) With support in Quirke. Ante n. (15).

MINISTRY OF TRANSPORT V PAYN

The appeal in Ministry of Transport v Payn came before the Court of Appeal and so too did the possibility of restoring some consistency into this area of law. The Court of Appeal had the opportunity to come to grips with this erratic area of law and mark out a positive and definite course. Unfortunately this was not to be so. Each of the three judgments(18) differ as much as the previous cases differ. There is no substantive consistency, and each judge adopts a different approach basing his decision on his own individual reasoning.

The court is unanimous in dismissing the charge under Section 58(1 (a) (driving with excess blood-alcohol content), but the charge under Section 58A (3)(a) (failing to accompany a traffic officer) was dismisse in accordance with the views of the majority.

Richmond P. expressed the view that a traffic officer can acquire "good cause to suspect" at a time when he is actually trespassing on private property and in that case his position would be analagous to a police constable who acquires evidence in a criminal case while unlawfully trespassing. His honour then considered that the prerequisit of all actions, the acquisition of "good cause to suspect" is an important protection against unjustifiable interference with a citizen's privacy or liberty. He points out that the power of arrest only arises if the person concerned refuses to submit to a procedure "designed for his own protection".

Richmond P. expressed the view that the purpose of the legislation is to reduce the road toll caused by drinking drivers, and that being of such importance, the court should not allow it to be defeated except on weighty grounds. He contends that it is unthinkable that suspected drivers should be able to elude the machinery set up by the Act merely by retreating on to private property whether their own, or belonging to someone else. He continues,

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(18) Richmond P., Cooke J., Woodhouse J.

> "to hold that the mere lack of leave and licence from the occupier would prevent the exercise of powers under Section 58A would lead to the type of absurdity and undesirable consequences described by Sachs L.J. in R. v Jones . [1970] 1 All E.R. 209,214".(19

This was relied on, with some vigour, in Ward. Sachs L.J. was cited as noting that these absurdities "would open up the chances of a new form of 'cops and robbers chase' which it seems impossible to contemplate was within the intention of the legislature".

Richmond P. prefers the approach that will give the Act a construction that will facilitate rather than hinder the taking of breath tests as quickly as possible after the officer acquires "good cause to suspect". He says,

> "as a matter of necessary implication I think that Parliament must have intended the powers conferred by Section 58A to carry with them authority to traffic officers to enter and remain on private property for the purpose of exercising such powers; such authority to operate as from the time when the officer concerned acquired 'good cause to suspect'". (20)

His honour states very definitely however, that such authority is not one which carries with it a right of forcible entry into a private residence without actual or implied leave and licence.

Richmond P. considered the consequences of Section 317 of the Crimes Act 1961 and expressed the opinion that it is clearly exhaustive of the rights of forcible entry vested in a constable by virtue of any authority to arrest without warrant conferred on him by the Crimes Act itself. The existance of Section 317 (1) thus makes it impossible to imply a right of forcible entry in all cases where arrest without warrant is authorised. His honour then stated,

> "In my view the officers, having acquired just cause to suspect, thereafter had implied statutory authority to re-enter the premises and remain on them for the purposes of requesting a breath test and requesting Mr Payn to accompany them." (21)

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(19) Ante n.6, Richmond P.,8.
(20) Ibid,9.
(21) Ibid,13.

He held that the respondent was properly convicted of an offence under Section 58A (3).

In repsect of the offence of driving with excess alcohol content, his honour held,

> "Where in general I feel confident that Parliament must have intended the powers now under consideration to be exercisable on private property, I can feel no such confidence that it was intended to confer a right to enter upon private residences without the leave of the occupier." (22

Upon this Richmond P. held that the traffic officer had exceeded his authority by entering Payn's house to arrest him, and because a valid arrest was a prerequisite to the taking of a blood specimen, the conviction under Section 58 (1)(a) could not be justified. RichmondP. in addition expresses that a right of entry for the purposes of section 58A is not dependant on the officer being in "hot pursuit", and that Cooke J. did not so hold in Police v Ward. He therefore disagrees with Barker J.

Cooke J.'s judgment hereis a far cry from the strong assertive judgment he delivered in Ward. Whilst the flavour of it is not sympathetic to the motorist, the tone of the judgment cannot be reconciled with that in Ward. Cooke J. appears to withdraw from his former, narrow construction and avoid the issues by forwarding the need for legislative intervention.

His honour asserts his concern that the dangerous and absurd consequences envisaged in R. v Jones could well be a very real risk, especially if the possibility of successful exploitation of property rights were to become more widely known. His honour states that in Ward he accepted the view that forcible entry may be permissible, however now in the light of the absence of any cases, and the changed attitude of the Ministry of Transport, he considered the right of forcible entry is not necessary for the working of the statute.

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(22) Ibid.

Cooke J. considered that courts should not infer rights of entry from general statutory language unless the precise infernece to be drawn is reasonably obvious. His honour considers that the range of judicial opinion had emerged too great and that this,

> "tends to show that in defining rights of entry the courts would pass beyond interpreting what Parliament has said; they would be speculating about the intention of Parliament or legislating themselves". (23)

Cooke J. felt that the perplexity created by the diversity of approaches compelled him to hold that powers of traffic officers do not extend to private property unless the officers are present on the property by the licence of the occupier.

> "That takes the powers of traffic officers no further than was settled by this court in Kelly v Lower Hutt City".(24)

Cooke J. concluded,

> "Anything more will have to be done by express legislation after specific consideration by Parliament". (25)

After careful consideration of the facts Woodhouse J. set the tone of his judgment in an outline of the Ministry of Transport's claim,

> "The claim is made that no matter the hour, a traffic officer is able to assert, even against the express wishes of the occupier, a power to enter and remain upon private property in order to pursue inquiries or to embark upon the screening process contemplated by the blood-alcohol provisions". (26)

His honour considers that the claim is based on no statutory authority because there is none. He points out that an intrusion upon private property rights, to an extent that by night as well as by day, the privacy and protection otherwise afforded by the laws of trespass, should be overborne by the need for an early breath test, authorised by Parliament as a mere statutory implication, must be unique.

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(23) Ante, n.6, Cooke J.,7.
(24) Ibid.
(25) Ibid,8.
(26) Ante n.6, Woodhouse J., 4.

Woodhouse J. States,

> "It [the claim] does not rest upon any express statutory authority or even upon what could possibly be regarded as a clear intention concerning the matter of the blood alcohol sections of the Transport Act, but merely upon the sort of inferences that the Court is asked to draw from their purpose and their entirely general language. Nor can any particular part of those sections be relied upon because they are silent concerning the exercise by constables or traffic officers of their statutory duties on private property. Instead, in the absence of a specific power of entry, the Court is really invited to hold that the power is needed for efficient administration and then to supplement the statutory provisions by supplying the deficiency. And I think the argument ignores the basic constitutional principle that whereas the civil liberties of citizens do not depend upon any express law or code, on the other hand every public authority (in the words of Professor R.F.H. Heuston) 'must point if questioned, to some specific rule of law authorising the Act which is called in question': Essays in Constitutional Law 2nd Ed. 34. See also 8 Halsbury's Laws of England 4th Ed. 548 (para. 828)." (27)

His Honour continues,

> "Moreover the present case involves a claim, not merely that a power of entry has been given to traffic officers but also as a necessary and intended consequence that there should be an encroachment upon important and valued personal rights. As to this last matter it has long been recognised that if there is to be any derogation from the liberties enjoyed by individuals in favour of powers given to an official it is essential that the change should be authorised in clear and definite terms". (28)

Furthermore he says,

> "nor am I able to think that in a matter of this importance Parliament can have taken for granted that basic rights of citizens were inferentially being overridden". (29)

On the basis of this Woodhouse J. could not accept the view that it would be open for the courts to remedy a flaw in the working of the Act by adding to or supplementing its provisions. His Honour considered that the Ministry's claim for the need of immediate and urgent action there by correspondingly necessitated a full right of forcible entry. He said, that there was no intermediate position and for the above reasons it must be rejected

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(27) Ibid, 9,10.

(28) Ibid.

(29) Ibid, 13.

Woodhouse J's. judgement clearly adopts the broad appraoch. He constantly refers to wider and deeper issues of civil liberties throughout his judgment. However he does give some indication as to how far traffic officers' powers do extend.

He says that it was open to the traffic officers as they were leaving the premises to require the respondent to submit to a breath test. The officers were also in a position after the respondent had continued to make it plain that he wished them to move off his property, to regard that as a refusal which would have enabled him to accompany them pursuant to section 58A (2)(b). A failure to accompany would have amounted to an offence and he could have been charged with that offence by way of summons, although not necessarily arrested. Hence when the traffic officers returned to the house they returned knowing it would be against the wishes of the respondent and they would be trespassers.

At the conclusion of his judgment Woodhouse J. states,

> "I cannot think that the right of entry claimed in this case for officers who administer the blood alcohol provisions of the Transport Act could have any really useful or statistical influence upon the efforts to regulate drinking and driving. Nor do I think such a power is intended or has been authorised by legislation." (30)

Putting the matter in that perspective has been long overdue throughout the cases. No judgment or argument had to this point being posited, indicating the negligible effects upon the road toll by the extension of traffic officers powers. The effect upon the regulation of drinking and driving would not be substantial to really warrant these encroachments of individuals' liberties.

CONCLUSION

The approach of the Court of Appeal is at the least disappointing. In a case where each of the judges has taken a separate, individual approach, the opportunity has been lost, or possibly avoided, to establish the limitations and draw a hard and fast line for both the traffic authorities and private citizens. Including Payn, it is evident that all but two of the judges see in the statute some necessary implication of rights of entry. All the judges consider the

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(30) Ibid, 19.

acquisition of "good cause to suspect" as a prerequisite to any action. However, no clear consensus appears as to the extent of those rights. This inconsistency and indifference, and the inherent judicial speculation to the extent of legislating themselves, led Cooke J. to draw no line at all, but instead, decide that the matter could now only be dealt with by Parliament's intervention with clear legislation. The arguments of both parties on this issue are strong, and it is a right that no side will lightly concede.

Throughout the cases the judges have tended to be overzealous in their interpretation of Parliament's intention. The diminishing of the road toll of drinking drivers, whilst it is an important objective and one which the courts should not hinder, can be achieved without subjecting the individual to further administrative interference of his privacy and freedom and the possibility of official harrassment. Certainly there is a worrying tone about R. v Jones 'cops and robbers chase', as there is in the possibility of the nearest strip of private property becoming a sanctuary from traffic officers. It is also vital to enhance the workability of the statute, but does all this realistically warrant extending traffic officers' powers and authorising another administrative body to further curtail the privacy of a person's home. Woodhouse J.'s contention that the claim of a right of entry for officers who administer the blood alcohol provisions could have no real or substantial influence upon the efforts to regulate drinking drivers, is certainly a valid one.

So where should the line be drawn? It is the author's view that the approach of Woodhouse J. is a preferable and efficacious solution for both interests.

On the facts of Payn the traffic officers arrived and the door was opened to them when they knocked. The traffic officers invited Payn to provide a specimen of his breath, but they were stopped short of requiring a specimen. Thus without needing to call on any compulsive powers of any sort under discussion, they had been able to enter private property quite lawfully (in terms of implied licence to enter) and while they remained there lawfully they had been able to carry forward their enquiries to a stage where if they had chosen, they could have required a breath test. If they then failed to obtain a specimen of breath they may deem that case as a refusal and consequently require the person to accompany them for a blood test. A refusal here would amount to an

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offence and they could arrest. Should the owner suddenly and abruptly revoke the implied licence, the law allows the visitor reasonable time to withdraw.(31) Woodhouse J. considers it would be open for the traffic officers upon leaving, to require the person to submit to a breath test.

In disapproving of this, the suggestion may be forwarded that whilst in the act of withdrawing, the officer's may only continue their requests contemplated by the statute. That is, the officers must have requested a specimen of breath before being ordered out. Only then may they deem the order as a refusal and require that the person accompany them. If the invitation, or implied licence, is withdrawn before this procedure is initiated the traffic officers subsequent actions would be as trespassers. This approach allows the occupier to revoke any implied licence or invitation at any time from the initial opening of the door, through any stage of the inquiry up until the request for a breath test. By drawing the line here, suspected offenders would not be able to defeat the workability of the act by abruptly ordering traffic officers off their premises at the stage when he has given the officers "good cause to suspect" and they have instigated the screening process.

The situation may arise where the officers, having carried their enquiries through and required a breath test, are confronted with a locked door. Alternatively the occupier may suddenly lock the door when the request for accompaniment is made. It is the author's strong belief that powers of forcible entry should not be available in such a situation. It is then open to the officers to bring the offender to court by summons. The offender's behaviour would not be inducive to minor punishment. Such a construction of the Act enables the workability of the provisions without any substantial hinderance and it also allows any occupier to assert his rights of privacy.

However, as Woodhouse J. indicated, if as an abstract exercise it is difficult to define the boundaries, how much more difficult would it be for the occupier and traffic officer when confronting each other at the scene? The solution is a difficult one.

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(31) Robson v Hallett [1967] 2 Q.B. 939.

However, through the apparent reluctance of Parliament, (not through lack of express judicial invitation) to make any decisive moves in legislating on the matter, inconsistency and indecision has resulted. Each successive case has adopted a different view, and depending on the type of construction, has drawn up different boundaries. Payn, against all expectation, has settled no clear line. The whole issue maintains it's weaving course, moving in the direction of the particular Judge's preference. This state of indecision will continue until such time as Parliament intervenes and specifically pin points where the line is to be drawn. Such a move will also indicate which of the approaches, narrow or broad, should be adopted. The Legislature in New South Wales has expressly excluded a man's usual place of abode from the places where it would be possible to require a breath test.(32) With there being no immediately visible end to the state of confusion outlined, it is the author's view that New Zealand's Legislature should follow what the New South Wales Legislature has seen fit to do, and expressly exclude the exact circumstances in which traffic officers can administer the provisions of the Act.

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(32) S.4E (d) Motor Traffic Act 1909 ; as inserted by S.2 of the Motor Traffic Amendment Act 1968.

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