

# R. v. beaudry essay

[Law](#), [Crime](#)



## Abstract

In the law enforcement, police officers are granted with discretion they can exercise in deciding whether to file a case against an accused or not. The case discussed in this paper will clarify the extent of the exercise of discretion and the parameters that should be considered by police officers in order not to qualify their acts as violation of their sworn duty.

## R. v. Beaudry

### Summary of the Decision

The issue of the case resolved in the Supreme Court is whether the decision of the trial court is reasonable. The decision reached a five against four decision. The majority opinion upheld the decision of the trial court finding Sergeant Beaudry guilty of obstruction of justice and hence dismissed his appeal. On the other hand, the minority opinion suggested for a new trial because of the obstruction of justice.

In the resolution of the case, the majority opinion concluded that evidences presented were enough to establish that Sergeant Beaudry deliberately failed to take breath samples from Officer Mr. Plourde for the purpose of hiding the latter's crime (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada). In reaching such decision, the majority established the relationship between a discretion and obstruction of justice. In the criminal justice system, police officers are granted with discretion which they apply in everyday routine of their duty. This discretion, however, is not absolute and should be done reasonable and within the context of justice. In order that discretion is justified, it has to pass two tests

namely; subjectively and objectively. In order that discretion can be said to have been done subjectively, it has to be “ exercised honestly and transparently based on valid and reasonable grounds” (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada).

According to the Supreme Court, the trial court committed no error in interpreting the evidences presented to have sufficed the elements of the crime of obstruction of justice. The Court held that Mr. Beaudry failed to take a breath sample from Mr. Plourde because the latter is a police officer from another department (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada). Furthermore, the discretion must be objectively or supported by material facts or circumstance. The discretion should have been applied properly in the sense that the seriousness of the offence has been considered. The Supreme Court held that in order the discretion is properly applied, the “ justification offered must be proportionate to the seriousness of the conduct and it must be clear that the discretion was exercised in the public interest” (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada). In the case of Mr. Beaudry, he may have exercised his discretion in good faith. However, it was not a legitimate exercise because it was deemed to avoid prosecution of Mr. Plourde. It was the surrounding circumstances that justified that Mr. Beaudry “ breached his duty beyond reasonable doubt by giving preferential treatment to an off- duty officer” (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada).

With regard to the administrative directive or policy relied upon by the defence, the Supreme Court recognized it to have bearing on the exercise of

discretion. But then, the administrative directive or policy is not the determinative in the instant case. The Supreme Court stressed that the policy raised does not have the force of law that can alter the scope of discretion that is found in common law or statute (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada). Thus, the decision of the trial court is reasonable.

In the contrary, the minority opinion reiterated that a new trial should be afforded to the accused. In arriving at such conclusion, the dissenters emphasized that the decision of the trial court was unreasonable because “ it was based on analysis and evaluation suffering from flaws” (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada). The dissenting opinion led by Justice Fish reiterated that the evidences presented by the prosecution was not enough to establish that Mr. Beaudry exercised his discretion corruptly or dishonestly and with the purpose of obstructing justice (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada). In addition, the dissenters stressed that a decision that has been through a process filled with flaws would be decided differently when tried again. In finding the need for a new trial, the dissenters pointed out evidences which would establish that Mr. Beaudry was in good faith and did not intend to obstruct justice. They stressed that an accused cannot be held guilty for obstruction of justice when he acted in good faith but his conduct cannot be characterized as a legitimate one (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada). Thus, the appeal of Mr. Beaudry should be upheld and be granted a new trial to clear the flaws that the trial court judge has missed.

## Analysis of the Decision

After the remarkable decision of the court in the instant case, different opinions were formed. Some agreed with the decision of the Supreme Court while others criticized it. In the news, most found the decision as a lesson that should be inculcated in the minds of the law enforcers. But others agreed that Mr. Beaudry should have not been convicted. In order to fully present the issue resolved in the case, the facts of the case should be stated.

On the unforgettable day of September 22, 2000, Sergeant in charge, Alain Beaudry and his two companions were in a routine operation (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada). At about 3: 30 a. m., they heard an unusual sound created by a vehicle coming toward them. Sergeant Beaudry pursued the vehicle while the other two followed him. Sergeant Beaudry observed that the minivan was over speeding and continued to drive through a stop sign and almost hit the median (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada). Mr. Beaudry asked the dispatcher about the minivan and was informed that it belonged to a resident of Repentigny named Patrick Plourde (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada).

When Sergeant Beaudry finally approached the minivan, the driver was responding to the order of the former, instead he banged his head to the wheel and through his body on the ground (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada). At that instant, the driver of the minivan told Sergeant Beaudry that he is also an officer and showed his badge as a proof. The following events amounted to the

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conviction of Mr. Beaudry for obstruction of justice. On the police station, Sergeant Beaudry made an occurrence report but did not approve the taking of the breathalyzer sample from Mr. Plourde (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada). Notably, a breathalyzer test is done in order to determine the concentration of alcohol in the body of the accused. In addition, he also ordered that Mr. Plourde be detained in a youth detention which is equipped with surveillance camera. Sergeant Beaudry reported the matter to the supervisor of Mr. Plourde but the latter required the former to prepare a report and scrutinized why a breathalyzer test was not taken. Sergeant Beaudry answered that Mr. Plourde needs a treatment instead of being charged for impaired driving because of his mental condition. However, the reason of Mr. Beaudry was not accepted, instead a case of obstruction of justice was filed against him for not taking a breath sample from Mr. Plourde.

In the trial court, the judge stated that the prosecution needs to establish beyond reasonable doubt that the accused exercised his discretion with the intent of obstructing, perverting, or defeating the course of justice. In addition, it was held that an exercise of discretion in good faith cannot be punished but it can be made punishable when it was used in order to defeat justice. Hence, the actus reus of the offence of obstructing justice must be carried out in two stages (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada). One, it should be settled first that the “conduct can be regarded as a proper exercise of discretion” (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada). If after thorough analysis, it was found that the conduct was indeed

proper, the second stage follows. On the second stage, the prosecution must present that obstruction of justice has really been committed (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada). From the trial court until to the Supreme Court, the accused was found guilty for obstructing justice.

According to Richard Steinecke, the decision of the court in the instant case would likely clear guidelines that would bind the investigatory bodies when making an investigation of cases (Steineckie). The decision in the Court limiting discretionary power of the police force can be applied to regulators who have the right of declining to investigate allegations or refer an allegation of professional misconduct to a discipline hearing (Steineckie). In here, the act of Sergeant Beaudry has been reiterated as professional misconduct. In addition, favouritism is seen as the reason of Mr. Beaudry for not taking the breath test. Moreover, the author also concurred that the acts of the accused in not justified. Almost all opinion would suggest the same. Some also acclaimed the decision for enforcing equality in the law enforcement.

However, it is noteworthy to visit the dissenting opinion in the Supreme Court. The established principle of limited exercise of discretion can fully be supported. But in the particular case of Sergeant Beaudry, his exercise of discretion has been recognized as legitimate. But then, the trial court found the legitimate exercise punishable because it has been premised to obstruct justice. The trial court reiterated that the evidences presented were enough to establish the guilt. However, in considering all the material circumstances of the case, it can be gleamed from there that the accused was not

dishonest or corrupt in his decision not to apply the breath test to Mr. Plourde.

According to Richard Steinecke, the discretion should be applied in appropriately and proper. But then, among the police force, the appropriateness of the discretion or the extent or kind of case where discretion may be applied may be a difficulty for them. The court reiterated that exercise of discretion may be said to be proper when the decision not to charge should not be based on “ favouritism, or on cultural, social or racial stereotypes” (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada). Nevertheless, finding Mr. Beaudry guilty of obstruction of justice defeats the established principle. As what the dissenters reiterated, the evidences derived by the trial judge in finding the accused guilty are filled with flaws. From the circumstances, it may be difficult to conclude that the accused favored Mr. Plourde because he is an officer. The justification for this could be the fact that the basis of the accused was merely on his belief that Mr. Plourde was suffering from mental and emotional disorder. Besides, there was no concealment on the part of the accused as he made known about the fact to Mr. Plourde’s superior.

Additionally, one issue raised by the author is the determination of the regulator whether it is appropriate to raise the acts of the accused to the discipline hearing. Knowing all about the circumstances of the case, the superior could have made an initial investigation and further heard the side of the accused before the case reached the highest court of the land. It can be worth to agree with Richard Steinecke when he stated that the



appropriateness of taking an action against Beaudry on the basis of his acts is doubtful.

This is also supported by Jodi Martin in her article *Accountability and the exercise of discretionary police power?* (Martin). The question whether discretion was proper and appropriate could be returned to the superiors of the accused who filed the charge against him. From the trial court up to the Supreme Court, the judges found no difficulty in making out the offence charged (Martin). Speaking about discretion, the decision may be acclaimed for setting the parameters as to the extent of proper exercise of discretion. According to Justice Charron, the exercise of discretion is proper only when the decision is not based on favouritism, or cultural, social or racial stereotypes” (Martin). However, the parameter may be confusing by the police force. The necessity of the discretion has been recognized but is not limitless (Martin). In the proper exercise of discretion, the reasons should be then weighed together with the gravity of the crime. In addition, in order not to confuse any police in exercising their discretion, the crimes should be specified as to which discretion may be applied. In the instant case, the crime was considered serious on the basis of the statement made by Justice Cory in the case of *R v. Bernshaw (Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada)*. In the instant case, drunk driving has been plaguing the society because of the destruction and accident it caused over time. It has been causing social loss to the country which should be taken seriously (*Alain Beaudry and Her Majesty The Queen, Judgments of the Supreme Court of Canada*). Mr. Plourde is just one among those who violated the law. Hence, the court found the failure to file charges

against Mr. Plourde as serious because of the graveness of the crime. The reason of the accused and the proper exercise of his discretion were not enough to defeat the turn down the seriousness of the crime.

Finally, it can be noted that majority applauded the decision on the basis that it sets an example to the police force. Others also suggest that the decision should be included in the curriculum of the students aspiring to be in the law enforcement. Although discretion has been granted to the police officers as necessary in the daily exercise of their functions, it should be noted always that the discretion is not absolute. The reason should be justified and the gravity of the crime should be considered in making a decision. In the case of Mr. Beaudry, good faith has been established in his exercise of discretion. However, the court found him guilty because they were satisfied by the evidences presented. But, as for me, a new trial should be granted in order to consider the mitigating factors because, as the dissenters have concluded, the accused was not corrupt or dishonest in making his decision.

## References

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