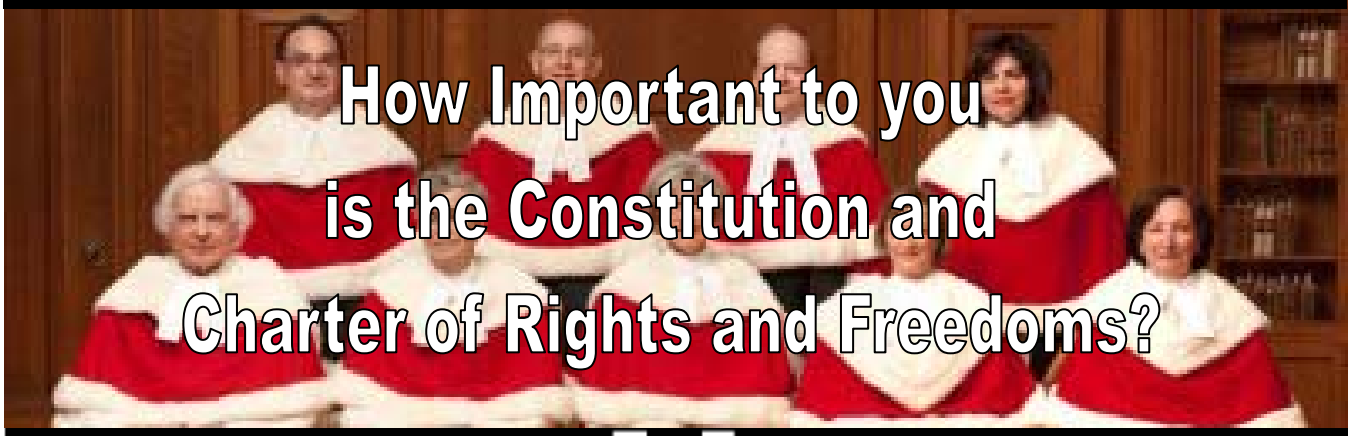
ISSUE 155 CHARTER RIGHTS July 2013



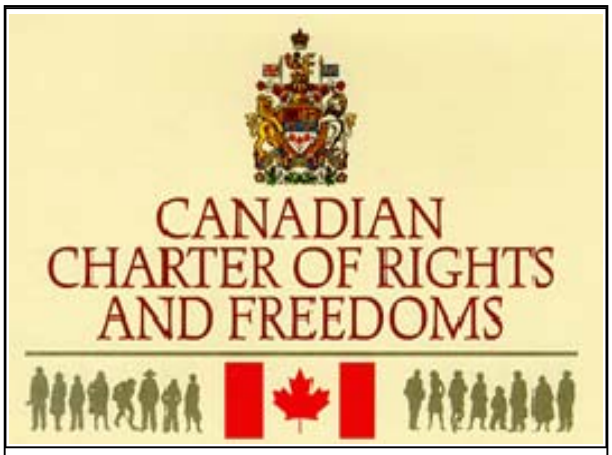
How Important to you is the Constitution and Charter of Rights and Freedoms?

MEMBER OF PARLIAMENT PETER GOLDRING

Since I was first elected to Parliament in 1997 I have actively supported and encouraged our guaranteed individual rights and freedoms under the Canadian Constitution, which of course includes the "repatriated" 1982 Constitution.

I first became involved in Constitutional study through my work with the Special Committee for Canadian Unity (SCCU), which my wife and I brought to Edmonton from Montreal following the 1995 Quebec Referendum. One of the two important acts of the Committee members was to "Challenge" unconstitutional actions in the Courts of Canada.

One subcommittee of our Alberta-based SCCU was a constitutional study group of three lawyers and myself, where we followed the development of Canada's Constitution from the Capitulations on the Plains of Abraham, Treaty of Paris, London Resolutions, to the British North America Act of 1867 (BNA Act) and of course to the 1982 Charter of Rights and Freedoms.



Canada`s Charter of Rights and Freedoms has proven to be a model studied and emulated by other countries around the world.

I have utilized this knowledge in my Parliamentary duties, particularly the Bills in Parliament to amend Section 93 of the BNA Act regarding Quebec schools and to amend the terms of Confederation for Newfoundland schools. I also have introduced a motion in Parliament to amend the Charter of Rights and Freedoms to be inclusive of Nunavut Territory.

Recently I attended the Occupy demonstrations, both in Edmonton and Toronto, where the central concern was for their rights to protest to be protected. I related that the wonderful, peaceful message of the Orange Revolution (in Ukraine in 2004) would not have been made if police had forcibly evicted the protestors. It was important that the Occupy demonstrators be allowed a reasonable length of time before conclusion.

Our Constitution and Charter of Rights and Freedoms are important and must be protected if at all possible. They are, after all, the very foundation of our civil liberties and,

while at times inconvenient, are indeed the envy of the world.

You supposedly have the right under the 1982 Charter of Rights and Freedoms, Articles:

7) Not to be deprived of life, liberty and security of person except in accordance with the principles of fundamental justice.

8) To be secure against unreasonable search and seizure.

9) Not to be arbitrarily detained or imprisoned.

10) To be informed promptly of the reason for arrest or detention and the right to obtain and instruct counsel without delay and to be informed of the right of habeas corpus.

Occupy demonstrators in Ottawa, Toronto, Edmonton and other Canadian cities were exercising their constitutional rights.

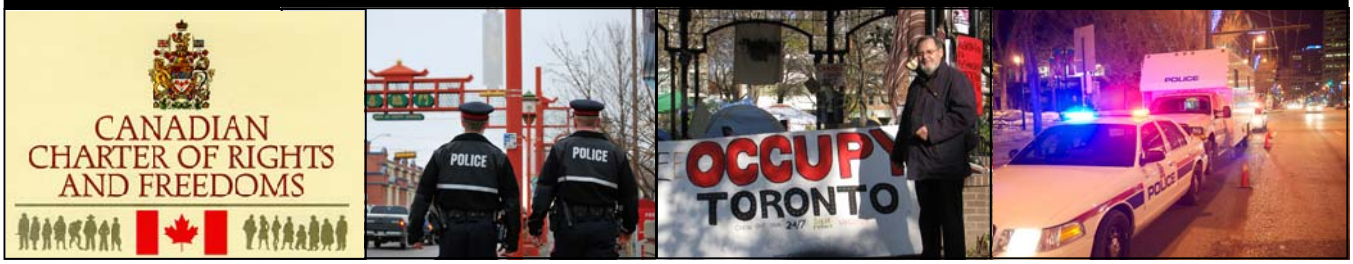
11) When charged with an offence to be informed without delay of the specific offence.

12) Not to be subjected to any cruel and unusual treatment or punishment.

What to do? If you are okay with the prospect of losing your rights and freedoms under the Constitution by creeping incrementalism, under the guise that it is for the better good of all so be it. If you want to stop the loss, speak up! Many legislators are motivated by powerful lobbyists believing that the widespread support for the simplistic don`t drink and drive message, will convert to voter support. This mixed message from lobbyists, from the Media even has police testifying that they are battling much misinformation.

Ever tougher provincial legislation, emotionally driven, flies in the face of the fact that Stats Canada reports that the number of impaired driving charges from 1990-2010 has fallen by 55%! The increase since has been more by new very aggressive creative enforcement techniques than by an increase in impairments. This legislation is not so much about lessening impaired driving tragedies as it is about obtaining special interest group votes.

What legislators should be doing is supporting legislation that is fair to all Albertans, indeed all Canadians and telling their constituents the pros and cons of legislation that will extinguish or diminish their rights. Tell them that certainly we want to remove the seriously impaired from the roads, but we have had long-standing federal legislation in place. This legislation, as any legislation, could be improved upon. But, this new provincial legislation comes with a price – it utilizes federal legislation to diminish your provincial civil liberties and rights. In our Constitution Articles 53-57 speak of disallowance powers, the power to



revoke or disallow federal and provincial egregious legislation. Perhaps the legislation should be viewed under the disallowance clause lens.

The public must be better engaged by proper public education, not just to confusingly project a simplistic message of "Don't drink and drive," while at the same time the overtly hypocritical and hazardous "Go ahead and have a drink, maybe two, you'll be okay," both messages being promoted by drinking and driving lobbyists themselves. Perhaps licensed dining establishments could provide information and education to the public with brochures and other information detailing what one or two drinks with a meal means in terms of the impairment laws and detail their rights if stopped by police, particularly if they have had a drink in the last 15 minutes to ensure that both the driver and the police follow the rules of proper procedure.

Ukraine`s non-violent Orange Revolution allowed to proceed to its conclusion brought about a new election by peaceful means.

The public has every cause to be concerned, as police cars now even lurk in dark corners outside licensed restaurants to target departing customers who aren't aware that even one recent glass of wine might trigger a failure and suspension – and there is no judicial oversight or appeal. The hand-held machines are far from perfect and are sometimes operated improperly, producing false readings. In Edmonton the Impaired Driving and Suspension offences are nearing twice as high per 100,000 as is the case in Calgary – why?

On top of this is the fact that your being stopped may have been caused by someone mischievously calling 911 and reporting that you have been drinking. You should know that many of the calls are not for the purpose intended but to falsely accuse the intended by disgruntled spouses, employees, business associates, etc.

When breathalysers were first allowed to be used for legal purposes it was widely debated and scientifically decided that the alcohol level to trigger an arrest was .08 grams per decilitre of blood. This was decided because statistically the accidents caused by impaired drivers were mostly caused by those well over that limit. In fact, Stats Canada states that the percent of those fatally injured by drunken drivers over .08 in 2008 was 85%! In addition, all other much lesser impaired driving fatalities from blood alcohol content (BAC) 0-.08 was 15%! While stats are not available, the suggestion is that extinguishing more and more rights with draconian techniques and effects to capture, by Criminal Code penalty provisions of testing requirements, a very small fraction, perhaps ½ of 15%, of impaired drivers is onerous. Any impairment would be mild and in the very much lesser range

of impairment by distracted driving. If the mantra of 'don't drink and drive at all' is to be believed, we should stop the hypocrisy and take the law to 0% BAC tolerance for alcohol and fully subscribe to nanny state logic.

Constitutional rights and freedoms were originally traded away for mandatory search and testing procedures for those exhibiting very serious impairment with charges for those that are seriously impaired, those above .08 and/or for those refusing to take the test. But now police are empowered to demand a test with no sign of impairment and penalize on the spot for very minor impairment questionably obtained and there is no judicial oversight of appeal. If you dare to have the temerity to challenge the request you are arrested and suspended from driving for much more than a year until you appear in court – guilty or not.

To unilaterally provincially drop the trigger level for penalties by almost half, to .05, with no science or federal study and on the basis (not even approved for giving court evidence) of an inaccurate screening device which is utilized threateningly with major criminal implication clearly in conflict with the letter and intent of the Criminal Code of Canada, is an overt abuse of Canadian Rights and Freedoms.

Update: An Alberta Assistant Chief Judge suggested in June 2013 how the criminal code could be amended to help alleviate concerns for hand held screener accuracy, that the roadside handheld screening test demand be made optional but in such circumstances that the central station intoxilyzer be the mandatory test alternative where the criminal code required mandatory testing applies.

9111 - 118th Ave.
Edmonton, AB T5B OT9
(780) 495-3261
Fax: 495-5142

Web Site:
www.petergoldring.ca
Email:
peter.goldring.c1@parl.gc.ca

411 Justice Bldg.
Ottawa, ON K1A 0A6
(613) 992-3821
Fax: 992-6898

This brochure series is intended to highlight special issues that Member of Parliament, Peter Goldring, has been involved in. If you wish to comment, please take a moment to fill out the survey below, write or call to the address above.

Your Opinion Matters...

Q1: Do you believe that the criminal code should be amended to allow for mandatory intrusive breath testing to be done on evidential grade central station equipment?

☐ Yes ☐ No

Q2: Do you agree that there should be absolutely zero blood alcohol tolerance and severe penalties for driving after drinking any alcohol?

☐ Yes ☐ No

Comments:_____

_____

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Address: _____
City: _____
Postal Code: _____
Telephone: _____

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Peter Goldring
Member of Parliament
Edmonton East
House of Commons
Ottawa, ON K1A 0A6

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