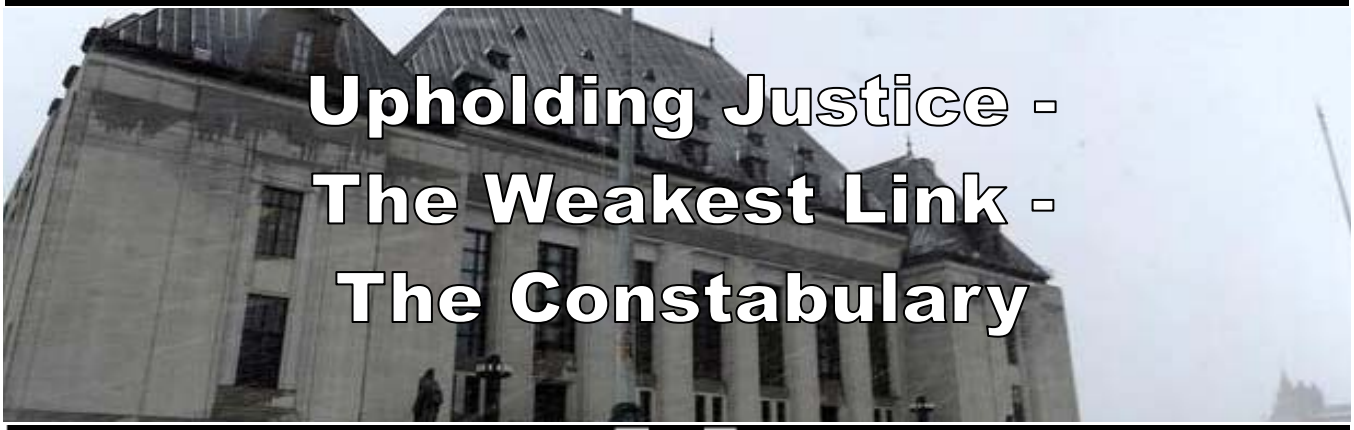
ISSUE 157 UPHOLDING JUSTICE July 2013

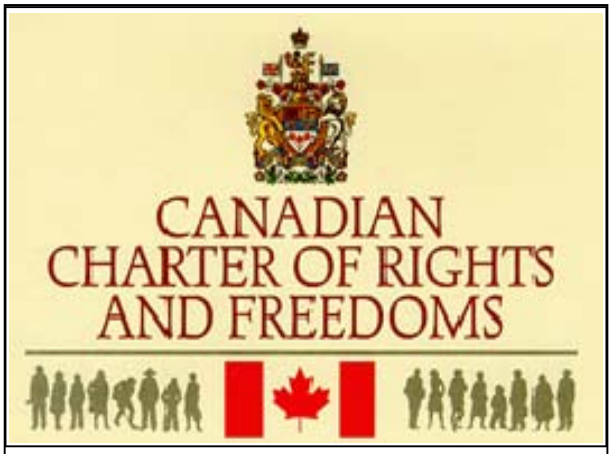


Upholding Justice - The Weakest Link - The Constabulary

MEMBER OF PARLIAMENT PETER GOLDRING

Canadians take their rights for granted. Too often it is assumed that government "knows best" allowing politicians influenced emotionally by special interest groups to pass legislation that infringes on our Constitutional Rights and Freedoms in the guise that it is to benefit us all.

Canada's Constitution with its Charter of Rights and Freedoms is very clear under Section 11: Any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal. Canada's Constitutional Charter of Rights and Freedoms is important to uphold. It's the slippery slope to anarchy and police state when this most basic of rights is extinguished.



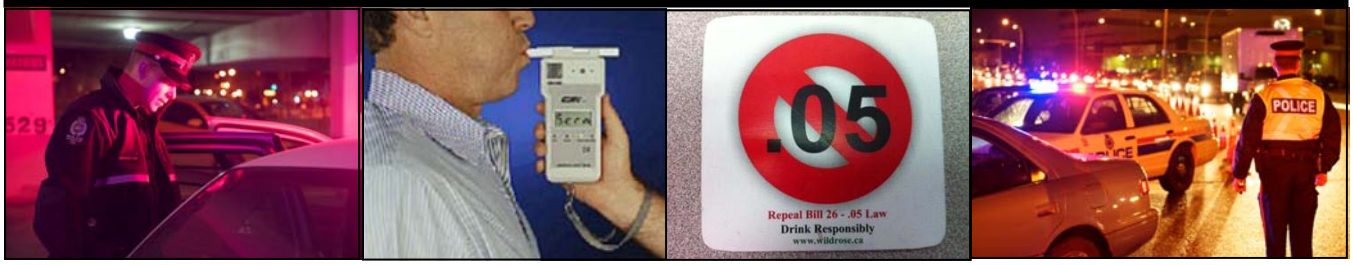
Canada`s Charter of Rights and Freedoms has proven to be a model studied and emulated by other countries around the world.

With Alberta`s new impaired driving legislation, removing judicial oversight from the courts by giving police the power to dispense roadside justice all based on a machine that is not accurate enough for court evidence appearing clearly to be in conflict with the constitutional intentions.

For example, our system of justice rests on three "pillars:" the "federal lawmakers", the "provincial lawmakers", and the "constabulary" exercising these laws.

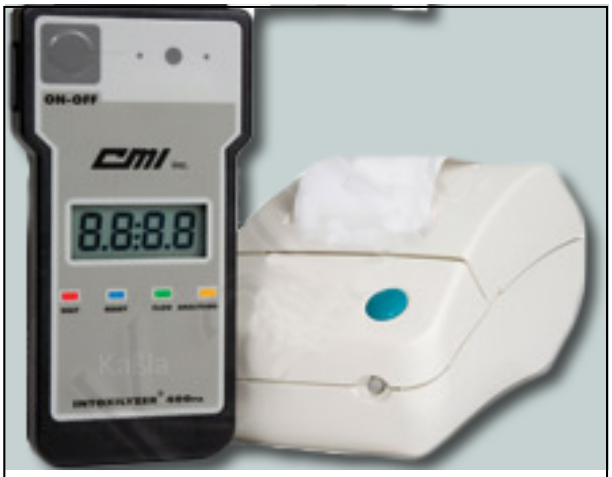
The role of Parliament is to create the federal laws that are thought to be necessary. The provinces sometimes piggyback their provincial laws on federal laws for authority. The police are delegated to be the front-line administrators. The system has worked well, but there is potential for error and harm when any one of the three pillars is not functioning the way it was intended.

The Parliament of Canada enacted laws in the Criminal Code regarding the impairment of drivers in the operation of a motor vehicle, and the penalties for the violation of those rules. The police enforce those laws, and the courts provide judicial oversight of the police in the conduct of their duties, respecting the rights



of the accused. In the case of Bill 26, this Alberta legislation empowers the police with the authority to bypass judicial oversight of the courts and to operate with relative impunity.

Alberta has decided to go beyond by straying into Federal Criminal law territory, deciding to unilaterally utilize the criminal code provisions of severe penalty for refusal of testing to force tests on those that clearly are not considered to be criminally impaired at or over .08 blood alcohol content (BAC). This testing, forced by the refusal to test Criminal Code law, allows them to impose further provincial suspension penalties on those who otherwise are not committing any Criminal Code violation utilizing a machine that is not even reliable enough to be accurate to give proper court evidence.



The handheld breath testing device has to be operated according to strict manufacturer specifications or they claim that the test results can be challenged in court.

Recently, the province has also added even more severe provincial license suspension penalties to those charged with the Criminal Code offences before the accused has ever been heard in a court of law. In Alberta, the accused are automatically presumed guilty by roadside constabulary sentencing with no judicial oversight, and, not even with a minimal level of electronic visual audio recording of events for clarity and accuracy.

The province has the constitutional responsibility to regulate the licensing of drivers. However it violates the letter and spirit of the law when it mandates excessive punishment against Section 12 of the Charter of Rights and Freedoms, by layering on and imposing additional provincial penalties on top of penalties already deemed to be appropriate, meted out under federal Criminal Code legislation. In addition, these provincial penalties are imposed many times on innocent drivers before they ever are proven guilty. In Alberta a driver is guilty until proven innocent!

The Alberta government has knocked down all three pillars of the legal system at once by infringing on legal rights of Sections 7 to 12 of the Charter of Rights and Freedoms under the guise of public safety, when more properly it should be characterized as political expediency.

By adding these provincial penalties the province is in effect challenging Parliament's lawmaking capabilities. By imposing penalties by fiat in this fashion, imposed unmonitored on the basis of police supposed suspicion of wrongdoing as opposed to actual proven fact, the province undermines the judiciary, acting more as a police state. The presumption of innocence that is fundamental to our legal system and our constitutional liberties is no more.

This provincial legislation empowers the lone patrol constable to become not just the accuser but judge, jury and executioner. Guilt is

pronounced immediately. The constable`s demand to test is made under section 254 of the Criminal Code of Canada, there is no defence allowed, sentencing is done on the spot and "justice" is "executed", with no possibility of appeal.

There is a concern furthermore that the police might, no matter what the reading on the testing device, proceed with provincial administrative penalties as opposed to over .08 BAC federal criminal charges. After all, even though the screening devices they utilize have computer read outs of BAC levels and real time recording, they are specifically never used.

Under present law police can suspend your driver's licence before you are found guilty of any crime and there is no appeal. Under Bill 26 police can suspend your licence and also seize your vehicle, also with no judicial oversight.

By proceeding with lesser penalties this would provide an immediate punishment with no provisions for the driver to appeal - with far less paperwork and no court time for the constable. Under present provincial legislation, testing at or over .05% but under .08 BAC the driver will be subjected to a 3 day suspension. For most drivers this would simply be a bearable inconvenience. For others it can be a career altering disaster, being written up on the police blotter and be all over the newspaper the next day as being an impaired (drunk) driver and there is no appeal process.

The only option possible if a person suspects that a fair process is not being followed is to challenge the test request. After all, with the pressure from the lobbyists, the demand now no longer simply is to test for serious impairment (of over .08%), as the Criminal Code was written, but now for minor .05 impairment; a level not even recognized by the Criminal Code as impaired. This becomes particularly important if the request is improperly made shortly after consuming even one drink within the previous 15 minutes (as in leaving a restaurant) as it can spike over according to the manufacturer of the machine.

However, if you dare to have the temerity to challenge the test request you likely will be charged with a Criminal Code charge of refusal, subject to possibly five years in prison for objecting to be tested for very minor impairments. The province then will immediately suspend your license until you are judged in court which could be one or two years away. The effect of these draconian provincial penalties is to threaten the driver just to take the lesser roadside penalty of a 3 day suspension even if not guilty of anything and if charged with impairment over .08, plead guilty immediately to greatly lessen the license suspension period.

Special interest groups to placate the restaurant industry disingenuously state "you can have a drink, or even two, and you`d be fine." They are wrong because they rely on the

testing to be done properly. The police are supposed to ask if you had a recent drink and to wait 15 minutes before testing if you say you did, but in practice they many times do not. The police themselves have testified in court that people are confused about consumption circumstances before a possible positive test and special interest groups are not helping with the confusion.

While the provincial legislators` desired end goal is a laudable one - the reduction of impaired driving on Alberta streets, they are empowering the weakest link, imperiling the pillars upholding justice in Alberta by eliminating judicial oversight of the constabulary.

If Alberta's legislators want the Criminal Code changed, they should ask Parliament to make those changes. They should not be creating new offences that have penalties which have little or no judicial oversight provisions or proper appeal process and which convict and punish the accused at the roadside before he can have his day in court. This empowerment of the constabulary - the Third Pillar of Justice - operating with impunity truly becomes the weakest link by which justice fails.

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 want there to be absolutely zero tolerance with more severe penalties for driving after drinking any alcohol?

☐ Yes ☐ No

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

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