

ROADSIDE SCREENING DEVICES

MEMBER OF PARLIAMENT



PETER GOLDRING

Breathalyzers or, more properly, hand-held roadside screening devices, can be a necessary and useful device in our modern society when dealing with determining the relative impairment - Blood Alcohol Content (BAC) - of an individual. Today these hand-held devices are used as the principal source of investigative methodology, replacing most all other investigative efforts that police are trained to conduct.

Most important is that the hand-held screening devices are not to measure the BAC of an individual with a degree of accuracy to be admissible in court. They are purposefully meant to screen an individual and if the machine's test displays being over the individual is then to be taken to a central intoxilyzer machine station where more accurate and court-admissible evidence of BAC is conducted for criminal prosecution if the individual tests over .08 BAC.

However, provincial legislation gives police power on the road to utilize these screening devices to arrest, suspend and impound vehicles without appeal, without allowing consultation with legal advisors. How many have had suspensions based on improper procedures? Some who are temporarily suspended will permanently be labelled as having been "impaired" or "drunk".

The manufacturer of the IntoxilyzerPA 400D, the Canadian version of this screening device utilized by the Edmonton Police

Department, states that it is very important for whoever is administering the breath test to follow the proper procedure very closely. The manufacturer of this screening device states that, if there is any deviation from the order in which the procedure is supposed to be done, the legality of any subsequent arrests could be questioned and brought into

doubt. However, technically – a roadside provincial suspension based on the reading



The IntoxilyzerPA 400D, used by the Edmonton Police Department, is a screening device with a built in processor which stores data of tests and refusals — a feature which police do not utilize.



is not an arrest and cannot be appealed ever.

One would think that because of the importance to follow the manufacturer's instructions so closely that the manual would also be accessible to the public for awareness and to lawyers for defence proceedings but it is not. Its distribution is carefully controlled, for the most part, through the police department themselves. The

manufacturer's manual for this all important screening device is, very suspiciously, not available for general public awareness, hence the importance of this brochure. The manufacturer is deferring clarity of their operating instructions to their police department customers who don't always follow them. Furthermore, demonstrating a disturbing lack of concern for transparency, the Edmonton police commissioner chair recently complained that the manual was not supposed to be available for reading by other "ordinary" citizens! Also, when asked to assist to bring about more clarity and information the police responded that their mandate was not to educate the public about breathalyzers. Obviously when even the police actively or passively withhold important information from the public nobody benefits and justice suffers. People have the right to be informed,



Know your rights: If you have finished your drink just before leaving a licensed establishment, inform the constable of this and ask for the test to be conducted only after a 15 minute wait.

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particularly when their rights and freedoms are at risk.

Before the breath test is administered, you should know that there are necessary questions that must be asked to the donor to ensure that they are given a fair test. The police do not always ask these questions. The manufacturer of the 400D screening device requests in their operating instruction manual

that the operator asks when did you last ingest something; meaning taking anything by mouth. The most important is if you just finished your drink before you left the restaurant.

Besides alcohol, many foods, non-alcoholic drinks, mouthwashes, medicines, etc., contain some alcohol. That being the case, to prevent any of these traces having effect

on the test, the donor must be given a 20 minute delay under careful supervision, supposedly by Edmonton Police testimony to be accomplished in the rear of a police car, from the time they last stated ingestion of anything to the time they take the breath test. This is not only for the benefit of the police to ensure proper monitoring but is also beneficial for the driver and their right to have a properly conducted test.



By allowing for this 20 minute period to pass, it ensures the complete dispersal of all mouth alcohol and should minimize the possibility of subsequent, successful challenge to the breath test reading in court. In addition, while under supervision, if the person burps or belches the delay should be extended as this action can cause alcohol to again be concentrated in the mouth which could result in possible high readings. While the manufacturer's very specific information in their manual calls for 20 minutes, the police regularly accept only a 15 minute wait period. This anomaly is not so clearly understood.

Police today to regularly support impaired driving charge numbers as stated in court: "sit in the bush" in the dark with all of their lights out targeting people who leave licensed restaurants to then demand an immediate test. Lobbyists say "you will be okay to drive with one or two drinks", but will you? You must now be sure that if a drink was recently consumed in the last 15 minutes prior to being pulled over that you ask for them to wait 15 minutes before you take the test or you might fail according to manufacturers. You might risk being arrested though. Confusing? – Yes! – and the police know it.

The IntoxilyzerPA 400D has a built in computer recording for printing out all tests after-

wards and logging refusals with the date and time information. Strangely, this information capability is not utilized, which draws the question "Why?" Imagine the savings in court time by having metered recordings of BAC and the proper time and date of certain testing events. It would be certainly valuable to determine if testing was within Charter Rights' time parameters and that appropriate time allowance be given after a recent drink.



Police can suspend your driver's licence before you are found guilty of any crime. Police can also suspend your licence and seize your vehicle with no judicial oversight.

The importance of highlighting the use of the IntoxilyzerPA 400D, clarifying rumors, and presenting the facts around breathalyzers such as this is to make citizens aware of their rights, and realities that surround the use of breathalyzer screening devices in determining guilt.

This is most important for drivers with BAC 0.05 - 0.08% who face an immediate 3-day license suspension and a 3-day vehicle seizure on the basis of a screening method whose results are not admissible in court due to inaccuracy. Repeat offenders face 15-30 day license suspension, 7-day vehicle seizure, and enrollment in an educational course.

If you test between .05 and .08 on the screening machine and feel that some of these factors have impacted you unfairly,

you are now entitled to ask for a second test administered by a different machine, most preferably a more accurate central station machine, to verify the results – but you have to ask for this to be done. Again, don't expect police to volunteer this important information to you. This option was not permissible under the previous legislation. Remember, you have absolutely no right to appeal to anybody the outcome of your suspension and vehicle confiscation! The roadside constable truly is empowered to be judge and executioner.

In Alberta, drivers with BAC over 0.08%, or drivers who challenge the request and are subsequently charged with refusal to test,

will have their license suspended for one to two years until the criminal charge is resolved in court, even if they are found to be innocent. In Alberta, you are guilty until proven innocent and sentenced to a long-term driving suspension even though you are later determined to be innocent!

As this new legislation implies, drinking and driving while impaired is a very serious offence, and it will rightfully be treated as such. However, the goal of this article is to inform you that you do have rights as a citizen on this matter, and you should never be afraid to exercise them.

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.

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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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