

# Test - But Know Your Rights

MEMBER OF PARLIAMENT



PETER GOLDRING

The choice is yours, but you may never have given it much thought before. Political life and business life involve more than long days of meetings with business groups, community groups, lobbyists and special interest groups. Some of these meetings take place in their offices, while others are in the more informal atmosphere of restaurants; receptions complete with food and alcoholic drinks.

The result? You may not be impaired as the Criminal Code defines it, but you could easily run afoul of new, tougher, provincial legislation that imposes strict penalties on drivers with a low threshold of alcohol in their bloodstream. Even one drink just before being tested could be enough to spike the test then your vehicle would be seized with a 72 - hour (in Alberta) licence suspension for you and of course the resulting publicity the next day because you are on the police blotter for being impaired. You will be falsely but permanently labeled by the press as being impaired.

For some business persons, staffers, or non-diplomatic persons, the discomfort is traumatic but not career altering. For senior business people and politicians it would be dramatically career-altering then and there when the media is apprised.

The laws have changed regarding drinking and driving. While the Criminal Code still makes it legal to drive with a blood alcohol (BAC) level below .08, individual provinces have introduced much lower standards. Alberta and Ontario have legislated lowering the acceptable limit to .05.

Do not expect that the constable will do due diligence in assessing your relative sobriety before insisting upon a test. Provinces are turning over traditional roadside personal impairment assessment skills of constables when they stop you exiting the parking lot

of a licensed function to hand-held breath testing screening machines for assessment that can be triggered by various means.



**Uniform equipped video cameras on patrol would allow for a record to be made of all incidents to protect both parties and save valuable court time.**



For political reasons it certainly is highly unlikely that the police would wait in darkened patrol cars with the engine off just outside Parliament Hill or Queen's Park, just as, for the same reasons, in Edmonton they would not target from darkened corners those departing evening functions at the Alberta legislature. Nor would the police target the parking lot of the Citadel Theatre to demand the patrons to test – "Now!" But licensed restaurants where the average person imbibes are fair game for special targeting!

In Edmonton, the police fan out to set up hiding in the dark with their lights off outside of licensed restaurants such as Boston Pizza to pull over patrons for immediate breathalyzer tests of any driver who has had even one lone drink. While there is a requirement by breath tester manufacturers for a wait period if the drink was consumed just before testing, police often do not ask. They are supposed to because a recent drink can falsely trigger a failure, but don't count on them following these rules. There is no monitoring or oversight of the police officers' actions. You stand a chance of wrongly incriminating yourself by following their orders to test immediately after you have just finished a drink.

What most people fail to realize is just how

little alcohol someone has to consume, most particularly just before testing, to reach the .05 limit. The penalties imposed by the provinces can be severe - penalties imposed without the driver actually being convicted of any crime. The conviction and sentencing is all roadside, without appeal. If you dare to challenge the demand for reason you will most likely be arrested and lose your license for well over a year without ever being convicted of a charge.

Graphically put, the police officer can convict someone, suspend their licence and confiscate their vehicle for driving 'impaired' when they are not. Then they will be on the police blotter, on public record for all to see, and there is no appeal.

Keeping seriously impaired drivers off the road is a laudable cause. No-one can disagree with that.

However, it would seem that in their zeal some provinces have overstepped their constitutional responsibilities and trampled on the rights of their citizens.

Certainly, there is confusion as to what is acceptable in terms of consumption of alcohol and getting behind the wheel of a vehicle. Perhaps it would be simplest for Parliament to pass legislation calling for a BAC of zero, with any trace of BAC resulting in a Criminal Code violation. However that "nanny state"



**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.**



approach could also be seen as an unreasonable limit on a citizen's freedom.

We have long-established Criminal Code penalties for impaired driving because impaired driving over .08 has been shown to be dangerous for the driver and all others on the road. Where do we draw the line? And why? Stats Canada claims that the impaired driving ratio has decreased 55% from 1991 to 2010! It would certainly appear that this emotional issue is being driven by lobbyists and legislators more interested in the lobbyists supporters' votes than in protecting people's rights.

The legislation in BC, Alberta and Ontario in effect has reduced the allowed blood alcohol level for drivers to a level that makes it questionable whether anyone can drink anything and drive without being in breach of the rules, depending on the proficiency of the screening officer. Lobbyists oddly say otherwise, saying that one or two standard drinks are okay just before driving; however, that depends on the testing being done correctly by police on the roadside, which many times is not. Police testify in court that the public is greatly misinformed. Meanwhile, the Edmonton Police Commissioner stated to the effect that no citizens should be permitted to read the manufacturers operating manual of the screening devices the police

utilize for suspensions and charges to understand them better! Additionally, when asked, the police responded in effect that they are not mandated 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, particularly when their right and freedoms are at risk.



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

Testing units can spike over .05 with even one drink if it has just been consumed. Dare to have the temerity to challenge the demand to test within 15 minutes of finishing one drink and you are threatened by the truncheon of five years imprisonment for refusal to test! This penalty was originally intended to balance serious impairment

(over .08) with breathalyzer testing avoidance in a criminally impaired vehicular homicide act but now is implemented if completely sober if one refuses to be breath tested by a portable, many times inaccurate, device, particularly if demanded shortly after consuming one drink.

Perhaps a good place to start would be by licensed premises to have breathalyzers – or at the very least literature - available for people to at least get acquainted with what the

testers and the law is all about. Certainly any person should have the option of having a blood test to prove their sobriety.

To better protect our rights and freedoms and to free a great amount of court time, it is suggested that the following improvements be made:

- Ensure that all police cars or officers have capabilities for audio-visual recording of all events.
- Have Edmonton Police Department radio "parks channel" be recorded for accuracy.

- Insist that police utilize the recording features of their handheld screening device to ensure accuracy of event reporting and timing.
- If police do not do this, ask if you can use your cell phone to record the event for accuracy.
- Have constables equipped with up to date body audio visual recording devices.

**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 the criminal code should be amended to help alleviate concerns for hand held screener accuracy?

Yes                       No

Q2: Do you want there to be absolutely zero tolerance and severe penalties for a driver if they have consumed any amount of alcohol?

Yes                       No

Comments: \_\_\_\_\_  
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