



BREATHALYZERS AND IMPAIRED FACULTIES

Offences related to driving under the influence of alcohol are probably the ones most likely to affect the "ordinary" person, that is, someone without a criminal past. Unfortunately, these offences can have serious consequences which the public does not always fully grasp.

If a police officer stops you in connection with an offence related to driving under the influence of alcohol and has reasonable grounds to believe that your blood alcohol level is above the legal limit, he can order you to come with him to the police station to provide a breath sample into an approved breathalyzer machine. If the police officer only suspects that you have committed such an offence, he can order you to immediately submit to a roadside screening test on a portable device. If you fail this test, he will then have reasonable grounds and will order you to come to the police station with him.

Regardless of the order given to you by a police officer, the failure to comply with that order constitutes a separate offence which could have more harmful consequences than the charge of driving with a blood alcohol level above the legal limit. Thus, as a general rule, it is preferable to comply with the police officer's order. It is easier to have a court set aside the results obtained following an illegal order than it is to defend yourself against a charge of failing to comply with an unlawfully given order.

In all cases, the arresting police officer will read you your rights, primarily the right to remain silent and the right to a lawyer. The right to consult a lawyer, at no cost and regardless of your financial situation, is protected under the *Canadian Charter of Rights and Freedoms*. It is therefore important to consult a lawyer as soon as the police give you the opportunity to do so. The lawyer will be able to properly explain the scope of your right to remain silent and advise you about the rest of the procedures.

Is it important to remember that in the event of repeat offences, the *Criminal Code* provides for minimum prison sentences and the *Société de l'assurance automobile du Québec* imposes very severe driver's licence suspensions.

In conclusion, if at some point in time you are wondering whether you are fit to drive or you are counting the number of drinks you've had, this is generally a good indication that you have had too much alcohol to be driving. The decision whether or not to drive should be made before your judgment is impaired by alcohol. After all, the best defence against a charge of impaired driving is the one you don't have to present because the offence was never committed in the first place.

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* The information set out in this document is not a legal interpretation.

The masculine gender is used to designate persons solely in order to simplify the text.