

Short Snappers:

A. Drug Impairment – “Dude, Where’s My Car?”

Prepared For: Legal Education Society of Alberta

Impaired Driving – The Changing Landscape

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For Presentation In:
Calgary – Sept. 22, 2012

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1. INTRODUCTION

Cases involving impairment by drug, as opposed to those involving alcohol or alcohol and a drug in combination, are relatively rare.

According to Jonathan Hak, Q.C., Team Leader of the Criminal Driving Unit of the Calgary Provincial Crown Prosecutor’s Office, there are only three to four cases a month in Calgary. This, despite the fact that recent studies performed in British Columbia utilizing random roadside testing, concluded that more drivers were tested positive for drug use than for alcohol use.

This study by the Canadian Centre on Substance Abuse, commented in the Executive Summary:

“The finding that drug use is now more common than alcohol use among drivers highlights the need for a societal response to the use of drugs by drivers comparable to that directed at drinking and driving over the past three decades.”¹

Furthermore, drug impairment cases remain rare, despite the enactment of new legislation which came into effect in July, 2008, giving police officers new tools to detect impairment by drug. Those changes found in Section 254 of the Criminal Code of Canada will be considered in this paper.

2. SECTION 254(2) SCREENING PROVISIONS

Section 254(2) sets out that if a peace officer has reasonable grounds to suspect that a person has alcohol or a drug in their body and that person has within the previous three hours operated a motor vehicle, the peace officer may, by demand, require the person to comply with paragraph (a) in the case of a drug, or with either or both of paragraphs (a) and (b) in the case of alcohol.

Paragraph (b), of course, is the more familiar approved screening testing provision involving the use of roadside screening devices, to which most Criminal practitioners are accustomed.

¹ Alcohol & Drug Use Among Drivers, British Columbia Roadside Survey 2008, Authored by: Douglas J. Beirness & Erin E. Beasley

Paragraph (a) specifically deals with physical coordination tests. These physical coordination tests are prescribed by regulation and will assist the peace officer in determining whether or not to make a demand to obtain a sample of bodily fluid.

Section 245(2) of the Criminal Code reads as follows:

(2) TESTING FOR PRESENCE OF ALCOHOL OR A DRUG — If a peace officer has reasonable grounds to suspect that a person has alcohol or a drug in their body and that the person has, within the preceding three hours, operated a motor vehicle or vessel, operated or assisted in the operation of an aircraft or railway equipment or had the care or control of a motor vehicle, a vessel, an aircraft or railway equipment, whether it was in motion or not, the peace officer may, by demand, require the person to comply with paragraph (a), in the case of a drug, or with either or both of paragraphs (a) and (b), in the case of alcohol:

(a) to perform forthwith physical coordination tests prescribed by regulation to enable the peace officer to determine whether a demand may be made under subsection (3) or (3.1) and, if necessary, to accompany the peace officer for that purpose; and

(b) to provide forthwith a sample of breath that, in the peace officer's opinion, will enable a proper analysis to be made by means of an approved screening device and, if necessary, to accompany the peace officer for that purpose.

(a). Standard Field Sobriety Tests

The physical coordination tests prescribed by regulation are officially termed Standard Field Sobriety Tests (SFST). The purpose of the Standard Field Sobriety Test is to assist the officer in determining whether there are grounds to demand further examination by a Drug Recognition Expert (DRE).

Section 254(2.1) of the Criminal Code, enables the peace officer to make a video recording of the performance of the physical coordination test or Standard Field Sobriety Tests. It should be noted that, in the exact way that a sample of breath into an approved screening device must be provided forthwith, the same is true for the performance of the physical coordination tests. They too must be performed forthwith.

The Standard Field Sobriety Tests were developed in the United States for the National Highway Traffic Safety Administration in the 1970's. Parliament has adopted Standard Field Sobriety Tests in the 2008 C-2 amendments to the Criminal Code. The Standard Field