

BEWARE: 24-HOUR PROHIBITIONS

Any driver in British Columbia needs to be aware of the 24 hour prohibition and the consequences of receiving one.

An officer may issue a driver a 24 hour prohibition if he/she believes that the driver's ability to drive is "*affected*" by alcohol or a drug other than alcohol.

This can be challenged by the driver by requesting a test to determine their blood alcohol level. Obviously this would only be sensible if only one or two normal drinks had been consumed. The challenge is not available if the officer has requested and has done a roadside screening test. Any color other than a green light on the roadside device means a fail and the officer is not obliged to do more. The trouble with a roadside screen is that the machine used does not pin-point a level – only a range and the limit of .5 is within the fail range. So the answer is to request a full breath test proper before the officer asks for a roadside breath test.

Presumably, you could also ask for any physical tests to demonstrate a lack of coordination problems associated with too much alcohol.

If a prohibition is issued, you have 7 days to ask for a review. The filing fee is \$50.00 for a written review. There are two grounds on which the review will automatically be successful: if it can be shown that the prohibition was issued to a person who was not the driver or did not have the care and control of the vehicle or if it can be shown that the officer refused or failed to have a blood alcohol test administered upon the request of the driver.

There are a number of ways to appeal an unfavorable result of a review. The decision may be reviewed by the Supreme Court under the *Judicial Review Procedure Act* by way of a Petition supported by affidavit or by registering a complaint with the Police Complaints Commissioner. The latter is the cheapest and depends mostly on fact, but takes longer: however, the former is constrained by a huge body of law which is basically unfriendly to the Petitioner.

It is important to understand the immediate and long term effects of a 24 hour prohibition. The immediate effect is that you can't drive. If you do and get caught, you face the possibility of an array of charges both statutory and criminal that potentially lead to fines, a record and at least a year long suspension. Further, if you are driving within the 24 hours and have an accident, you will be personally liable for any damages as you are uninsured for the duration of the prohibition.

The long term effect is that you have started a record with the Superintendent of Motor vehicles and ICBC so that if you manage to acquire just **three** 24 hour prohibitions within a **five** year period, you will be required to take part in the Ignition Interlock

Program for one year at a cost to you of \$1,500.00 as well as successfully completing the Responsible Driver Program at a further cost to you of \$888.00.

In theory, the 24 hour prohibition is a good program because it satisfies the officer that he/she has removed a potential danger from the street without the necessity of a lot of time and paper work related to the usual criminal charges of “impaired” and “.08” and the driver gets off with no more harm than a lesson learned. In practice, however, it creates a nightmare when officers do not exercise their discretion with the proper respect for the niceties of forming their opinion. The test they have to meet is purely subjective which often leads to what may well be an unjust exercise of their power. The other problem is that you can not refuse a request to take a roadside test. If you do you face a potential “refusing to blow” charge under the criminal code.

It is a very difficult situation given that it is not against the law to drink and drive if you do not breach the .05 or .08 limits. If you do get caught up in this process, please get advice from a competent criminal lawyer as soon as possible within the 7 day review window.

If you have any questions, call me at 604-437-0461 or e-mail me at johnb@gbclaw.ca.

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