

THIS JUST IN – **DO NOT REFUSE A DEMAND FOR A BREATH TEST**

Say you drove home from the office one night arriving at 6 p.m. You and your spouse are giving a party. You had nothing to drink before getting home. Your car is in the garage and your keys are hanging up in the kitchen. Guests arrive and drinks are served. At 8:30 an annoyed neighbour phones the police to complain about the noise. At 8:45 a policeman arrives to investigate the complaint under the municipal noise bylaw. The officer knocks on the door and you invite him in. He sees that you have a beer in your hand and asks you if you have driven a car within the last three hours. You properly tell him that you drove home two hours and forty-five minutes ago. The officer makes a demand that you take a test for alcohol consumption in a screening device and demands that you perform a series of physical tests to determine your sobriety.

You are outraged and consider refusing – do not do that. The demands are legal and the consequence would be a “refusal to blow” charge under the criminal code. There may be a defence to this non-sense within the provisions of the Charter of Rights, but it has not yet been tested and such arguments are very expensive.

So, unless you particularly want to make legal history, take the test and argue later. The logic of allowing a person to be charged with a crime when no crime has been committed escapes reason, but that is what it is until it gets struck down. If you do get caught up in that scenario or any process managed by the police in which you are the object of their attention, follow their demands and immediately contact a competent criminal lawyer without delay.

If you think that this is scary, read our analysis of dealing with a “.08” or “impaired” charge.

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

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