

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA)

BETWEEN:

**RICHARD JAMES GOODWIN, JAMIE ALLEN CHISHOLM,
SCOTT ROBERTS, and CAROL MARION BEAM**

APPELLANTS

AND:

**BRITISH COLUMBIA (SUPERINTENDENT OF MOTOR VEHICLES) and
ATTORNEY GENERAL OF BRITISH COLUMBIA**

RESPONDENTS

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FACTUM OF THE RESPONDENTS

(Division of Powers and Section 11(d) of the *Charter*)

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART 1: OVERVIEW OF POSITION AND STATEMENT OF FACTS

1) Overview of Position

1. Despite ongoing efforts to reduce the number of injuries and fatalities attributable to drinking and driving, earlier strides made in the fight have lost momentum.¹ Persisting as one of Canada's most preventable social harms, drinking and driving costs hundreds of Canadians their lives and results in millions of dollars in property damage every year.²

2. Regulating drinking and driving in Canada is a concerted effort between both levels of government. All of the provinces and the two territories have enacted regulatory schemes that are designed to meet regional needs while interlocking with, or working parallel to, the *Criminal Code of Canada* ("Code") provisions concerning impaired driving.³ That the provinces can validly enact laws regulating drinking and driving, despite the existence of federal criminal laws on similar subject matter, has been recognized by this Court for 74 years. Since the seminal decision of *Prince Edward Island (Secretary) v. Egan* ("Egan"), courts across the country have consistently recognized the constitutional jurisdiction of provincial legislatures to pass laws in relation to drinking and driving despite the powers found in the *Code* to punish individuals for driving while impaired by alcohol.⁴

3. As part of the ongoing response to drinking and driving, and in recognition that the *Code* provisions and earlier administrative driving schemes were not doing enough to reduce alcohol-related vehicle fatalities, the British Columbia Legislature amended the *Motor Vehicle Act*, R.S.B.C., 1996, c. 318 (the "*MVA*") to introduce the "Immediate Roadside Prohibition" or "IRP

¹ Affidavit #1 of Stephen Martin, sworn March 15, 2011, Joint Record, Volume IV, Exhibit "M" at p. 742 ["Martin Affidavit"].

² Affidavit #1 of Professor Robert Mann, sworn March 14, 2011, Joint Record, Volume VII, Exhibit "C", p. 1284-186, paras. 4-7 ["Mann Affidavit"].

³ Appendix B to the Attorney General of British Columbia and Superintendent of Motor Vehicles' Factum on the Division of Powers and s. 11 Issues: "Legislation from All Canadian Jurisdictions on Vehicle Licencing Suspensions Relating to Drinking and Driving" ["Appendix B"]; Mann Affidavit, Vol. VII, Exhibit "C" p. 1287.

⁴ *Prince Edward Island (Secretary) v. Egan*, [1941] S.C.R. 396, [1941] 3 D.L.R. 305 ["Egan"] – Volume I, Tab 20 of the Attorney General of British Columbia and Superintendent of Motor Vehicles' Book of Authorities for the Division of Powers and s. 11(d) Issues ["AGBC BOA s. 11"].

Scheme” found in ss. 215.41 to 215.51 of the *MVA*.⁵

4. There is nothing in the IRP Scheme that removes it from the Province’s jurisdiction to legislate in the area of property and civil rights. It is a licencing scheme aimed at ensuring highway safety; it is not criminal law. It works by immediately revoking an individual’s driving privileges if he or she has engaged in the high-risk activity of drinking and driving. The IRP Scheme works in concert with other provisions in the *MVA* that authorize the Superintendent of Motor Vehicles (the “Superintendent”) to require those who drink and drive to attend remedial programs, such as education or counselling.

5. The Appellants appear to make two main points in their division of powers analysis: (1) the federal government has “occupied the field” in the area of impaired driving thereby ousting provincial regulation; and (2) the IRP Scheme is a “colourable” attempt to legislate in the area of criminal law. The “occupied the field” approach to the division of powers analysis has been soundly rejected by this Court. Further, the Appellants’ assertion that the IRP Scheme is a colourable attempt to legislate in the area of criminal law is not supported by the wording of the *MVA*, the extrinsic evidence, or a consideration of the legal and practical effects of the IRP Scheme. Rather, as found by both the British Columbia Supreme Court and the Court of Appeal, the IRP Scheme is valid provincial legislation enacted to ensure highway safety.

6. The IRP Scheme provisions do not create an “offence” and therefore s. 11(d) of the *Charter of Rights and Freedoms* (the “*Charter*”) is not engaged.⁶ In *R v. Wigglesworth* (“*Wigglesworth*”), this Court confirmed that “proceedings undertaken to determine fitness to obtain or maintain a licence” do not engage s.11.⁷ The IRP Scheme institutes a process to determine driver fitness to operate a motor vehicle in light of evidence a driver has engaged in drinking and driving (or failed or refused to provide a breath sample into an Approved Screening Device (“ASD”) without reasonable excuse to confirm whether this was the case). The nature of

⁵ *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, ss. 215.41-215.51. In the lower courts the IRP Scheme was referred to as the Automatic Roadside Prohibition Scheme or the ARP Scheme. The Attorney General of B.C. prefers the description Immediate Roadside Prohibition Scheme.

⁶ *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, c. 11 [the “*Charter*”].

⁷ *R. v. Wigglesworth*, [1987] 2 S.C.R. 541, [1987] S.C.J. No. 71, at p. 560, *per* Wilson J [“*Wigglesworth*”] – Volume I, Tab 35 of the AGBC BOA s.11.

the proceeding under the IRP Scheme falls squarely within the holding in *Wigglesworth*. Moreover, the proceedings under the IRP Scheme and the administrative sanctions that may be imposed fall well short of “true penal consequences”. Section 11 does not apply to the IRP Scheme.

7. The Appellants’ suggestion that the test for determining whether a matter creates an “offence” be refined to focus only on the public nature of the legislation should be rejected. The approach suggested significantly overshoots the purpose of s. 11 and ignores the important public safety purpose of the IRP Scheme.

2) Statement of Facts

A) Introduction

8. The Attorney General of British Columbia and Superintendent (the “AGBC”) do not accept the Appellants’ version of the facts as they include selective pieces of evidence interspersed with argument. The AGBC adopts the Statement of Facts, Adjudicative Facts, and Procedural History as set out in her factum filed in relation to the constitutional question regarding section 8 (“AGBC Section 8 Factum”). The AGBC briefly sets out the adjudicative facts to provide the necessary context for the constitutional analysis required in this appeal. In addition, as determining the objective of the IRP Scheme is essential to both the division of powers analysis and the s. 11 issue, it is necessary to first review the legislative facts in relation to the *MVA* generally and the IRP Scheme in particular.

B) Legislative Facts

a) *The Motor Vehicle Act and Associated Road Safety Programs*

9. The *MVA* provides for the licencing and regulation of drivers in British Columbia. It creates the Superintendent and vests upon him a number of powers and obligations designed to enhance highway safety.⁸ The *MVA* empowers the Superintendent to create a number of programs designed to regulate driving. Section 93 of the *MVA* allows for the establishment of the

⁸ ss. 217 and 218.

Driver Improvement Program, an intervention program that identifies high-risk drivers and intervenes through mechanisms ranging from warning letters to driving prohibitions. High-risk drivers are identified through penalty points, certain criminal convictions, and actions taken by peace officers.⁹

10. The Driver Fitness Program is created by ss. 25, 29, 92, and 230 of the *MVA*. The Superintendent utilizes Driver Fitness to identify and assess drivers to determine if they are physically, medically, and cognitively fit to drive. If the Superintendent receives a reliable report of a potentially dangerous situation that affects driver fitness, the person will be assessed for potential safety risks. Further assessment is conducted at regular intervals for drivers who hold commercial licences, if the person has a medical condition known to affect safe driving, and when a driver reaches the age of 80.¹⁰

11. Section 25.1 of the *MVA* grants the Superintendent discretionary power to require drivers to participate in driver training courses and remedial programs when the Superintendent is of the opinion that a person's driving record is unsatisfactory or when he considers it in the public interest to do so. The Superintendent has established two programs to reduce recidivism in the area of drinking and driving: the Responsible Driver Program and Ignition Interlock.

12. The Responsible Driver Program is provided by a consulting corporation with expertise in alcohol and drug-related counselling programs. The consultant screens drivers referred by the Superintendent to determine the risk of repeat drinking and driving incidents and assesses appropriate intervention. Depending on the level of risk identified, drivers are placed into one of two programs: (i) education, focussed on the effects of alcohol and drugs on the body, and the associated risks; or (ii) counselling, focussed on individual circumstances and coping strategies to lower the individual's safety risk. Upon completion of the program, a report is provided to the Superintendent with respect to the driver's participation. The Superintendent reviews the report and determines whether a driver may retain, or reapply, for his or her licence.¹¹

13. Ignition Interlock is designed to ensure long-term behaviour modification in drinking

⁹ Martin Affidavit, Vol. III, at pp. 564-656, paras. 19-21.

¹⁰ Martin Affidavit, Vol. III, at pp. 566-567, paras. 33-37.

¹¹ Martin Affidavit, Vol. III, at p. 565, paras. 22-24.

drivers. A driver referred to Interlock is required to install a device into the ignition system of his or her vehicle that prevents the vehicle from starting unless the driver provides a sample of breath that registers below the pre-set amount of acceptable blood alcohol concentration (“BAC”). The device serves as a constant reminder of the problem behaviour and is a cost to the driver, serving as an effective behaviour modification tool.¹²

14. The Indefinite Suspension Program requires persons criminally convicted of specific motor vehicle related offences to automatically have his or her driver’s licence, or right to apply for a licence, suspended for a minimum of one year. Persons with previous convictions face longer suspensions.¹³

15. The Vehicle Impoundment Program authorizes a peace officer to impound a person’s vehicle if they have engaged in high-risk driving behaviours, including drinking and driving (s. 251). In the IRP Scheme, ss. 215.46(1) and (2) impose the specific consequence of a vehicle impoundment when an individual has received a driving prohibition. For 30 or 90-day driving prohibitions, the person’s vehicle is impounded for 30-days. For 3 or 7-day driving prohibitions the peace officer has discretion to impound the individual’s vehicle for up to the term of the prohibition. Most Canadian jurisdictions have vehicle impoundment for drinking and driving related infractions.¹⁴

b) Driving Prohibitions

16. The AGBC Section 8 Factum describes in detail the 24-hour prohibition, the administrative driving prohibition found in ss. 94.1 to 94.6 of the *MVA* (the “ADP Scheme”), and the IRP Scheme. In this factum, the AGBC highlights three points about the IRP Scheme: (1) the introduction of the “warn” prohibition; (2) the immediacy of the IRP; and (3) the processes in place for an individual to seek a review of the IRP.

i) Introduction of the “warn” prohibition

17. The IRP Scheme introduced a 3, 7, or 30-day driving prohibition for individuals who

¹² Martin Affidavit, Exhibit “M”, Vol. IV, p. 754.

¹³ Martin Affidavit, Vol. III, at p. 566, at paras. 28, 29; s. 232.

¹⁴ Appendix B; Mann Affidavit, Volume VII, Exhibit “C”, p. 1282-1283, para. 2.

register a “warn” on an ASD.¹⁵ The *MVA* defines “warn” as an indication on an ASD that the concentration of alcohol in a person’s blood is not less than 50 milligrams of alcohol in 100 millilitres of blood (s. 215.41(2)). There are no provisions regarding a “warn” reading under the ADP Scheme. Further, the prescribed limit in the *Code* is a BAC of 80 milligrams of alcohol in 100 millilitres of blood or higher.

18. All provinces except Quebec have introduced laws that allow for administrative action for driving with a BAC at or above .05% (.04% in Saskatchewan).¹⁶ Research supports the conclusion that the risk of collisions exponentially increases with increasing BAC and that collision risks are significantly increased in the 0.05 to 0.08% range and possibly below.¹⁷ This increased risk is combated by imposing administrative penalties for individuals registering a BAC of 0.05% or above.¹⁸

ii) The Immediacy Requirement of the IRP Scheme

19. The IRP Scheme is designed to operate in two distinct phases. First, the legislation empowers peace officers to serve a notice of driving prohibition when he or she has reasonable grounds to believe either that: (a) on the basis of a “warn” or “fail” result on an ASD, the person’s ability to drive is affected by alcohol (s. 215.41(3)); or (b) upon a demand being made for a sample of breath under the *Code*, the person failed or refused, without reasonable excuse, to provide a sample (s. 215.41(4)).

20. An important feature of the IRP Scheme is that the driving prohibition takes effect immediately upon service (s. 215.43(3)). Evidence suggests that the effectiveness of administrative suspensions depends partly on the swiftness within which the consequences occur.¹⁹ Therefore, unlike the ADP Scheme, the IRP Scheme does not provide a 21-day period before the prohibition takes effect. In the case of a “fail” result or refusal to provide a sample, the individual is immediately prohibited from driving for 90-days, or until the Superintendent

¹⁵ The duration of the prohibition depends on whether the individual has previously received a “warn” IRP.

¹⁶ Mann Affidavit, Vol. VII, Exhibit “C”, pp. 1287 and 1297, paras. 8 and 23; Appendix B.

¹⁷ Mann Affidavit, Vol. VII, Exhibit “C”, p. 1295, para. 19.

¹⁸ Robert Solomon, Erika Chamberlain, and Cory Lynch, “Canada’s New Impaired Driving Legislation: Modest Gains and Missed Opportunities”, 56 *Crim. L.Q.* 51 2010, pp. 72-75 – Volume II, Tab 59 of the AGBC BOA s.11.

¹⁹ Martin Affidavit, Exhibit “M”, Vol. IV at pp. 136 and 145.

revokes the prohibition. Additionally, the person's vehicle is immediately impounded for 30-days. The immediacy of these consequences is an integral part of the deterrent effect intended by the Legislature.²⁰

iii) *The Administrative Review Process*

21. The second phase of the IRP Scheme allows a driver to seek a review of the driving prohibition.²¹ The review is conducted by a delegate of the Superintendent ("adjudicator"). For 30 or 90-day prohibitions, the applicant may choose to have a written or oral hearing.²²

22. Section 215.49 prescribes the evidence that must be considered on review: (a) any relevant written statements or evidence submitted by the applicant; (b) the report of the peace officer; (c) a copy of the notice; (d) any other relevant documents and information forwarded to the Superintendent by the peace officer who served the notice of driving prohibition...; (e) ... any relevant evidence given or representations made at the hearing; and (d) in the case of a second or subsequent prohibition...the person's driving record.²³

23. Once the Superintendent receives the peace officer's documents, a notation of the IRP and associated consequences are entered onto the individual's driving record. If the individual has requested a review, he or she is provided with the documents sent in by the peace officer prior to the hearing date and is entitled to provide whatever evidence or submissions he or she deems relevant (s. 215.48(3)). The file is assigned to an adjudicator to conduct the hearing and render a decision.²⁴

24. Section 215.5 describes the possible decisions available to the Superintendent. If the notice served is a 3, 7, or 30-day prohibition, the Superintendent must be satisfied that the applicant was a "driver" within the meaning of the *MVA*, and that the ASD registered a "warn".

²⁰ Martin Affidavit, Exhibit "O", Vol. IV at p. 780: "police will have additional tools -- I think fair to say more immediate, more efficient tools -- to deal with impaired driving, with swift and severe penalties available at roadside".

²¹ s. 215.48(1) -- The application must be made within seven days of service of the notice of driving prohibition.

²² s. 215.48(5).

²³ The section further stipulates that in a review under s. 215.48, no person may be cross-examined (s. 215.49(2)) and despite subsection (1), the Superintendent may proceed with a hearing whether or not the Superintendent has received all those documents required to be forwarded by the peace officer (s. 215.49(3)).

²⁴ Martin Affidavit, Vol. III, at p. 582, paras. 113 and 114.

If the Superintendent is satisfied on a balance of probabilities of those conditions, he must confirm the prohibition, corresponding impoundment, and monetary penalty.

25. With respect to a 90-day prohibition, the Superintendent must be satisfied on a balance of probabilities that the applicant was a “driver” within the meaning of the *MVA*, and that the ASD registered a “fail”²⁵ (or the person failed or refused to provide a sample without a reasonable excuse, as the case may be). If those conditions are present, the Superintendent must confirm the prohibition, corresponding impoundment, and monetary penalty.²⁶

26. The decision of the Superintendent to confirm or revoke the prohibition must be in writing and sent to the applicant within 21 days of the date of service of the prohibition.²⁷ If the applicant takes issue with the adjudicator’s decision, then he or she may commence a petition for judicial review in the Supreme Court of British Columbia.²⁸ British Columbia courts have consistently applied the reasonableness standard of review to decisions of adjudicators under the *MVA*.²⁹

C) Adjudicative Facts

27. The Appellants may be separated into two groups: Ms. Beam, Mr. Chisholm, and Mr. Roberts, who each provided a breath sample into an ASD registering a “fail”, and Mr. Goodwin who failed to provide an adequate breath sample.³⁰ There are no individuals before this Court who registered a “warn” on an ASD.³¹ Each of the Appellants admitted to consuming alcohol prior to driving, in three cases the attending officer noted other symptoms of indicia and in the

²⁵ Prior to the amendments, the legislation had been interpreted as requiring a ‘reliable’ fail, see: *Gillies v. British Columbia (Superintendent of Motor Vehicles)*, 2011 BCSC 899, at para. 90 – Volume I, Tab 12 of the Attorney General of British Columbia and Superintendent of Motor Vehicles’ Book of Authorities in the Section 8 Issue [“AGBC BOA s.8”].

²⁶ ss. 215.5(1)(b)(i) and (ii); s. 215.5 allows the Superintendent to vary the duration of a prohibition if an incorrect prohibition was applied at the roadside.

²⁷ s. 215.5(6); If the Superintendent is unable to send the decision to the applicant within the time allowed by the *MVA*, that period may be extended for a period of time. The Superintendent may also stay the driving prohibition for the period of the extension and direct the Insurance Corporation of British Columbia (“ICBC”) to issue the applicant a temporary licence: ss. 215.5(7), (8) and (9).

²⁸ Martin Affidavit, Vol. III, at p. 584, paras. 125 and 126.

²⁹ *Nagra v. British Columbia (Superintendent of Motor Vehicles)*, 2010 BCCA 154, 285 B.C.A.C. 133, at para. 18 – Volume I, Tab 16 of the AGBC BOA s.11.

³⁰ Mr. Sivia abandoned his appeal shortly before the appeal was argued.

³¹ Mr. Wilson in the companion appeal registered a “warn”; however, he has not brought a constitutional challenge.

fourth, Mr. Roberts was involved in a collision prior to police contact.³² Each Appellant was prohibited from driving for 90-days, had his or her car impounded for 30-days, and was required to pay a \$500 monetary penalty and the licence reinstatement fee. For two of the Appellants (Ms. Beam and Mr. Goodwin) there is evidence that they were referred to remedial programs, specifically Responsible Driver and Interlock.³³ However, the Petitions Judge found that while the decision to require a driver to attend the remedial programs was discretionary, those drivers who blew a “fail” were sent to the remedial programs as a matter of course.³⁴

PART II: QUESTIONS IN ISSUE

28. On December 18, 2014, this Court stated the following constitutional questions:

- i) Are ss. 215.41 – 215.51 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, as enacted on September 20, 2010, *ultra vires* the province of British Columbia as being exclusively within the federal government’s criminal law power under s. 91(27) of the *Constitution Act, 1867*?
- ii) Do ss. 215.41 – 215.51 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, as enacted on September 20, 2010, infringe s. 11(d) of the *Canadian Charter of Rights and Freedoms*?
- iii) If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

³² Affidavit #1 of Richard James Goodwin, Joint Record, Vol. XI, pp. 2038 and 2041-2042; Affidavit #1 of Erin Wikman (Beam), Joint Record, Vol. II, pp. 388-390; Affidavit #1 of Erin Wikman (Chisholm), Joint Record, Vol. II, pp. 343-344; Affidavit #1 of Stephen Martin (Roberts), sworn March 15, 2011, Joint Record, Vols. IV and V, p. 836-845.

³³ Affidavit #1 of Richard James Goodwin, Joint Record, Vol. XI, pp. 2035-2036; Affidavit #1 of Erin Wikman (Beam), Joint Record, Vol. II, p. 404.

³⁴ Reasons for Judgment of the British Columbia Supreme Court, Joint Record, Volume I, p. 13, para. 30 [“BCSC Reasons”].

PART III: ARGUMENT

1) The IRP Scheme is Valid Provincial Legislation Pertaining to Highway Safety

A) Overview of the Division of Powers Issue

29. In the last 74 years this Court has had a number of occasions to consider the validity of provincial legislation aimed at driver licencing and highway safety in circumstances where federal legislation targeting similar subject matter exists. On each occasion, this Court has confirmed the validity of the provincial legislation. The Appellants err in their attempt to distinguish this long line of authority. They attempt to revive the approach to assessing jurisdiction known as the “occupy the field” doctrine, whereby the enactment of a *Code* offence regarding impaired driving occupies the field so as to exclude, by implication, provincial legislation aimed at addressing similar conduct. This Court has repeatedly rejected this approach as it is inconsistent with the prevailing “double aspect” theory of legislative jurisdiction and with the principle of co-operative federalism.³⁵

30. The Appellants’ analysis on the division of powers issue is erroneous. They fail to “ask the right questions in the correct order”.³⁶ First and foremost, they fail to address the purpose of the IRP Scheme on its own terms, without reference to the *Code*. Instead, the Appellants ask in essence one question: has the IRP Scheme replaced the *Code*? In so doing, they conflate the well-established steps in analyzing whether provincial legislation in pith and substance deals with a subject matter that comes within a recognized head of provincial jurisdiction.³⁷ When the proper constitutional analysis is undertaken, the IRP Scheme, like all other provincial drinking and driving regulatory schemes that have preceded it, is valid provincial legislation.³⁸ Neither the British Columbia Supreme Court nor the Court of Appeal erred in their approach to the division

³⁵ *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161, 138 D.L.R. (3d) 1 [“*Multiple Access*”] – Volume I, Tab 15 of the AGBC BOA s.11.

³⁶ *Sahaluk v. Alberta (Transportation Safety Board)* 2015 ABQB 142, at para. 117 [“*Sahaluk*”] is the most recent constitutional challenge in the trial courts where Wakeling, J. notes, “[t]he likelihood that a court will wisely and rationally resolve a division-of-powers constitutional problem increases significantly if it asks the right questions in the correct order” – Volume I, Tab 38 of the AGBC BOA s.11.

³⁷ A similar “colourability” argument was made, and rejected, in *Buhlers v. British Columbia (Superintendent of Motor Vehicles)*, 1999 BCCA 114, [1999] B.C.J. No. 408, at paras. 56-60, leave to appeal dismissed [1999] S.C.C.A. No. 219 [“*Buhlers*”] – Volume I, Tab 1 of the Appellants’ Book of Authorities [“APP BOA”].

³⁸ *Egan, supra* – Volume I, Tab 20 of the AGBC BOA; *Ross v. Registrar of Motor Vehicles*, [1975] 1 S.C.R. 5, 42 D.L.R. (3d) 68 [“*Ross*”] – Volume I, Tab 18 of the APP BOA.

of powers analysis.

B) A Long Line of Cases Support the Validity of the IRP Scheme

31. Provincial regulation of highways, including the regulation of drinking and driving, has a lengthy statutory and judicial history. In fact, the province of Ontario enacted laws regulating drinking and driving prior to the introduction of the first *Code* provisions on the same subject.³⁹ Provincial regulation of drinking and driving has its genesis in the general regulation of highways. As early as 1900 this Court noted that the right to build and operate highways was “wholly within the purview of the provincial legislatures”.⁴⁰

32. In 1941, this Court in *Egan* upheld the jurisdiction of provincial legislatures to suspend a driver’s licence for conduct that also resulted in a criminal offence and conviction. *Egan* concerned an automatic 12-month licence suspension upon a *Code* conviction for driving under the influence of liquor or drugs. Justice Rinfret described the nature of provincial legislative jurisdiction in respect of highways as follows:

The right of building highways and of operating them within a province...is wholly within the purview of the province [citation omitted], and so is the right to provide for the safety and circulation and traffic on such highways. The aspect of that field is wholly provincial, from the point of view of both the use of the highway and of the use of the vehicles. It has to do with the civil regulation of the use of highways and personal property, the protection of the persons and property of the citizens, the prevention of nuisances and the suppression of conditions calculated to make circulation and traffic dangerous.⁴¹

33. Rinfret J. also distinguished a provincial licence suspension for intoxicated driving from the criminal law punishment for intoxicated driving stating:

It [the provincial licence suspension] does not create an offence, it does not add to or vary the punishment already declared by the *Criminal Code*; it does not change or vary the procedure to be followed in the enforcement of any provision of the *Criminal Code*. It

³⁹ *Criminal Code Amendment Act*, S.C. 1921, c. 25, s. 3 - Tab 45 of the AGBC BOA s.11; *Motor Vehicles Act*, S.O. 1906, c. 46, s. 9 (6 Edw VII c. 46) – Volume II, Tab 47 of the AGBC BOA s.11.

⁴⁰ *O’Brien v. Allen*, (1900) 30 S.C.R. 340, at p. 2 – Volume I, Tab 17 of the AGBC BOA s.11.

⁴¹ *Egan* at p. 415, *per* Rinfret J. – Volume I, Tab 20 of the AGBC BOA s.11.

deals purely and simply with certain civil rights in the Province of Prince Edward Island.⁴²

34. In 1957, this Court upheld the validity of provincial legislation that provided for suspension of a driver's licence when the driver refused to provide a breath sample or was driving under the influence of alcohol.⁴³ In 1960, this Court in *O'Grady v. Sparling* upheld the constitutionality of provincial legislation that made it an offence to drive "without due care and attention" despite the existence of a *Code* offence for advertently negligent driving.⁴⁴ In 1966, this Court in *Mann v. R* ("*Mann*") rejected the argument that the enactment of the *Code* offence for dangerous driving "occupied the field" of dangerous driving behaviour so as to oust the provincial regulation of careless driving.⁴⁵ In 1975, this Court in *Ross v. Registrar of Motor Vehicles* ("*Ross*") upheld the validity of a provincial licence suspension that was longer than those provided under the *Code*.⁴⁶

35. These early decisions of this Court provide a complete answer to the Appellants' claim that the IRP Scheme is *ultra vires* the Province. Any provincial regulatory scheme that has as its purpose the enforcement of the terms and conditions of a driver's licence in the interests of public safety is a valid exercise of provincial legislative jurisdiction. The IRP Scheme clearly falls within these parameters.

36. The Appellants attempt to distinguish these cases on the basis that the prohibitions in the IRP Scheme take effect at the roadside without an immediate opportunity to seek a review of the prohibition. This is in error. As discussed further below, the means chosen to effect the prohibition does not change the "matter" of the IRP Scheme. The objective is driver licencing and highway safety, this is true whether the prohibition takes effect immediately or after a grace period in which to challenge the prohibition.

37. Further, the IRP Scheme does not add to, or vary, a punishment in the *Code*. There is no

⁴² *Egan* at p. 415, per Rinfret J. – Volume I, Tab 20 of the AGBC BOA s.11.

⁴³ *Validity of Section 92(4) of the Vehicles Act (1957)(Sask.)*, [1958] S.C.R. 608, 15 D.L.R. (2d) 225 – Volume I, Tab 41 of the AGBC BOA s.11.

⁴⁴ *O'Grady v. Sparling*, [1960] S.C.R. 804, 25 D.L.R. (2d) 145 – Volume I, Tab 18 of the AGBC BOA s.11.

⁴⁵ *Mann v. R.*, [1966] S.C.R. 238 – Volume I, Tab 13 of the AGBC BOA s.11; In *Mann*, the parties accepted that careless driving was properly within provincial legislative jurisdiction at p. 243.

⁴⁶ *Ross, supra* – Volume I, Tab 18 of the APP BOA.

Code offence for failing an ASD at roadside, nor is there a *Code* offence for registering a “warn”. An IRP imposed on those bases cannot add to or vary a punishment in the *Code*. In *Egan*, the licence suspension imposed was in addition to Mr. Egan’s conviction and related driving prohibition, yet this Court held the licence suspension did not “add to” or “vary” a punishment in the *Code* because the provincial prohibition operated independently. It would be absurd if a provincial licence suspension, imposed in addition to a criminal driving prohibition, does not “add to” the *Code* offence, but a provincial driving prohibition imposed without any criminal proceeding would have this effect.

38. The Appellants have not pointed to a single case in which provincial legislation regulating drinking and driving was ultimately found to be *ultra vires*. A number of appellate courts across the country have applied this Court’s case law and upheld driving prohibitions for drinking and driving as valid exercises of provincial jurisdiction under s. 92(13). The British Columbia Court of Appeal applied *Egan* to uphold the constitutional validity of a 24-hour roadside prohibition scheme and to uphold the constitutional validity of the driving prohibition established under the ADP Scheme.⁴⁷ In 1999, the Ontario Court of Appeal upheld Ontario’s equivalent of the ADP Scheme as valid provincial legislation and, in a similar vein, the Alberta Court of Appeal upheld provincial legislation in Alberta enacting a regulatory driving scheme.⁴⁸ Numerous trial courts have also considered and upheld the constitutional validity of provincial legislation enacted to address drinking and driving in some manner.⁴⁹ Most recently, the Alberta Court of Queen’s Bench upheld the validity of provincial law similar to the IRP Scheme wherein the prohibition becomes effective when it is issued.⁵⁰

39. The cases referenced above confirm that the provinces have legislative jurisdiction to regulate driver licencing and public safety on the highways. The IRP Scheme fits comfortably

⁴⁷ *R. v. Wolff* (1979), 9 B.C.L.R. 390, 46 C.C.C. (2d) 467 (BCCA) – Volume I, Tab 32 of the AGBC BOA s.11; *Buhlers* at para. 54 - Tab 1 of the APP BOA.

⁴⁸ *Horsefield v. Registrar of Motor Vehicles*, [1999] O.J. No. 967, 44 O.R. (3d) 73 (ON CA) - Tab 5 of the APP BOA; *Thomson v. Alberta (Transportation and Safety Board)*, 2003 ABCA 256, [2004] 4 W.W.R. 535 (Alta. C.A.) at para. 25 [“*Thomson*”] – Volume I, Tab 40 of the AGBC BOA s.11.

⁴⁹ *British Columbia v. Hurst*, [1984] B.C.J. No. 3088, 14 C.C.C. (3d) 193 (BC SC) – Volume I, Tab 3 of the AGBC BOA s.11; *R. v. Leclair* (1990), 67 Man. R. (2d) 265 (Man. Q.B.) - Tab 25 of the AGBC BOA s.11 (provincial legislation enacting Manitoba’s equivalent of the ADP regime - legislation upheld); *R. v. MacCormick* (1988), 34 M.V.R. (3d) 266 (P.E.I.S.C.) – Volume I, Tab 26 of the AGBC BOA s.11 (provincial legislation enacting PEI’s equivalent of the ADP - legislation upheld); *Sahaluk, supra* – Volume I, Tab 38 of the AGBC BOA s.11.

⁵⁰ *Sahaluk, supra* – Volume I, Tab 38 of the AGBC BOA s.11.

within this purpose, as discussed further below. These considerations are sufficient to dispose of the Appellants' arguments on this issue.

C) The Appellants Seek to Revive the Moribund "Occupy the Field" Doctrine

40. The above-noted cases undermine the argument that the enactment of a *Code* offence for driving-related conduct prevents the application of provincial legislation that imposes licence suspensions and provincial driving prohibitions for the same (or similar) conduct. The Appellants nevertheless argue repeatedly that the existence of criminal prohibitions for impaired driving renders the subject matter of impaired driving inherently criminal, thereby ousting provincial legislative authority to impose a driving prohibition for driving conduct that is also prescribed by the *Code*.⁵¹ This approach implicitly seeks to revive the "occupy the field" doctrine 33 years after it was soundly rejected by this Court in *Multiple Access Ltd. v. McCutcheon*.⁵²

41. In the context of regulating drinking and driving this Court recognized the roles for both the provincial and federal governments as early as 1941 in *Egan* and as recently as in 2009 in *Chatterjee v. Ontario (Attorney General)* ("Chatterjee"):

In *Egan* and *Ross*, the provincial laws were clearly aimed at deterring impaired driving, notwithstanding its status as a federal offence, and with good reason. Drunk drivers create public safety hazards on provincial highways and their accidents impose costs by way of examples on the provincial health system and provincial police and highway services.⁵³

42. To the extent the Appellants assert that the federal government has occupied the field of drinking and driving, decisions of this Court make clear those arguments must fail. There simply is no room in a legal system that values co-operative federalism for the Appellants' approach to the scope of provincial legislative authority or for the "occupy the field" doctrine that the Appellants try to revive in this case.

⁵¹ Appellants' Factum, at paras. 63 and 64.

⁵² *Multiple Access* at pp. 180-182 – Volume I, Tab 15 of the AGBC BOA s.11; See also *Chatterjee v. Ontario (Attorney General)*, 2009 SCC 19, [2009] 1 S.C.R. 624, at para. 35 ["Chatterjee"] – Volume I, Tab 3 of the APP BOA.

⁵³ *Chatterjee* at paras. 15 and 41 – Volume I, Tab 3 of the APP BOA; See also *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3, at para. 30 ["*Canadian Western Bank*"] where drinking and driving is referred to as a "classic example" of "double aspect" – Volume I, Tab 6 of the AGBC BOA s.11.

D) The Provincial and Federal Regulation of Drinking and Driving is an Excellent Example of Co-operative Federalism in Action

43. While the courts are the final arbiters of whether a law falls properly within the scope of the provincial or federal legislative jurisdiction, it is important to keep in mind that the “task of maintaining the balance of powers in practice falls primarily to governments, and constitutional doctrine must facilitate, not undermine what this Court has called ‘co-operative federalism’”.⁵⁴ In practice, regulating drinking and driving in British Columbia is a concerted effort between both levels of government. Indeed, the regulation of drinking and driving has been characterized by a long history of cooperation between the provincial legislatures and Parliament and is evident in the development of the interlocking legislative schemes presently in place to control and reduce the pervasive social ill of drinking and driving. All of the provinces and the two territories have enacted regulatory schemes that are designed to meet regional needs while interlocking with, or working parallel to, the federal *Code* provisions.⁵⁵ Courts have encouraged flexibility in the approach to the division of powers analysis to “facilitate interlocking federal and provincial legislative schemes and to avoid unnecessary constraints on provincial legislative action”.⁵⁶ The facilitation of interlocking provincial and federal attempts to control and reduce drinking and driving is precisely what is at issue in this appeal.

44. The *Code* provisions that establish drinking and driving related offences work in concert with the IRP Scheme to fully combat the human and financial costs of drinking and driving.⁵⁷ The pursuit of a regulatory sanction, or a criminal investigation, both begin with a peace officer, who having formed a reasonable suspicion that a driver has consumed alcohol, may demand a sample of breath on an ASD.⁵⁸ If that sample produces a “fail” or a “warn” result, or if a driver fails or refuses to provide a sample, the peace officer may then exercise his or her discretion to determine whether the criminal or regulatory process would best serve the interests of the public.

⁵⁴ *Canadian Western Bank*, at para. 24 – Volume I, Tab 6 of the AGBC BOA s.11.

⁵⁵ *R. v. Orbanski*; *R. v. Elias*, 2005 SCC 37, [2005] 2 S.C.R. 3 at para. 27 – Volume I, Tab 29 of the AGBC BOA s. 11; Appendix B.

⁵⁶ *Quebec (Attorney General) v. Canada (Attorney General)*, 2015 SCC 14, [2015] S.C.J. No. 14, at para. 17 [“*Quebec*”] – Volume I, Tab 21 of the AGBC BOA s.11; *Canadian Western Bank* at para. 36 - Tab 6 of the AGBC BOA s.11; *Reference re Firearms Act (Can.)*, 2000 SCC 31, [2000] 1 S.C.R. 783 at para. 26 [“*Firearms Reference*”] – Volume I, Tab 36 of the AGBC BOA s.11.

⁵⁷ See for example, *Criminal Code* provisions: ss. 253(1)(a), (b), 245(5), 255.

⁵⁸ Reasons for Judgment, British Columbia Court of Appeal, Joint Book, Volume I, at p. 196, para. 92 [“BCCA Reasons”].

Such a scheme allows for the flexibility to address consequences proportional to the seriousness of the underlying conduct, the identification of recidivist drivers, and the consideration of possible aggravating factors.

45. This flexibility is the latest step in the evolution of provincial and federal legislative schemes aiming to control drinking and driving and is consistent with the best tradition of co-operative federalism.⁵⁹ It allows Parliament to enact laws under its criminal law power and it allows provinces the flexibility to try alternative approaches to best meet their regional needs. Indeed the IRP Scheme is an excellent example of one of the primary benefits of a federal political structure where significant legislative authority is exercised at the regional level: the encouragement of innovative and new approaches to addressing complex social problems.

E) Determining the ‘Matter’: The Proper Approach to Division of Powers

46. To the extent British Columbia’s legislative jurisdiction to enact the IRP Scheme is not confirmed by the application of the above-noted authorities, a formal division of powers analysis confirms this conclusion.

47. This Court has, on numerous occasions, confirmed that the division of powers analysis involves distinct steps.⁶⁰ The analysis must always begin by determining the “matter” or “dominant purpose or true character” of the law.⁶¹ It is only after the “matter” of the law is identified that one may turn to classifying the law according to the heads of power in the *Constitution*: “unless the two steps are kept distinct there is a danger that the whole exercise will become blurred and overly oriented towards results”.⁶²

48. When determining pith and substance both the purpose of the law and practical effects are considered. In undertaking such an analysis, this Court has emphasized that the goal is to “ascertain the *true* purpose of the legislation, as opposed to its mere stated or apparent purpose”

⁵⁹ *Ward v. Canada (Attorney General)*, 2002 SCC 17, [2002] 1 S.C.R. 569, at paras. 30-31 [“*Ward*”] – Volume I, Tab 42 of the AGBC BOA s.11.

⁶⁰ *Canadian Western Bank* at para. 26 – Volume I, Tab 6 of the AGBC BOA s.11; *Chatterjee* at para. 16 – Volume I, Tab 3 of the APP BOA; *Quebec* at para. 29 – Volume I, Tab 21 of the AGBC BOA s.11.

⁶¹ *Canadian Western Bank* at para. 25 – Volume I, Tab 6 of the AGBC BOA s.11; *Quebec* at paras. 28-29 – Volume I, Tab 21 of the AGBC BOA s.11.

⁶² *Chatterjee* at para. 16 – Volume I, Tab 3 of the APP BOA; *Quebec* at para. 32 – Volume I, Tab 21 of the AGBC BOA s.11.

(emphasis in original). To do so, courts may look to both intrinsic (i.e. statement of legislative purpose) and extrinsic evidence (i.e. *Hansard*).⁶³ When the constitutional challenge, as is the case here, is part of a larger legislative scheme, the pith and substance analysis starts with examining the challenged sections. However, the larger legislative context remains important to the analysis as the “relationship [of the challenged provisions] to that scheme may be an important consideration”.⁶⁴

49. As to effects, if a provincial law has incidental effects upon an area of federal jurisdiction, this will not upset the balance demanded by Canada’s federalist system.⁶⁵ The jurisdictional overlap common to the federalist system was commented upon by this Court in *Canadian Western Bank v. Alberta*:

The “pith and substance” doctrine is founded on the recognition that it is in practice impossible for a legislature to exercise its jurisdiction over a matter effectively without incidentally affecting matters within the jurisdiction of another level of government. For example, as Brun and Tremblay point out, it would be impossible for Parliament to make effective laws in relation to copyright without affecting property and civil rights, or for provincial legislatures to make effective laws in relation to civil law matters without incidentally affecting the status of foreign nationals [citation omitted].⁶⁶

50. In *Chatterjee*, this Court notes that the “occupying the field” reasoning has been “rendered obsolete” and it is “clear that a federal law touching on a ‘matter’ does not in general create a negative inference ousting the operation of a provincial law otherwise valid in relation to provincial objects.”⁶⁷ It is only when there is an operational conflict that the provincial law will be inoperative.⁶⁸ In order to establish an “operational conflict”, the challenger must demonstrate that there is actual conflict between the laws or that the provincial legislation is incompatible with

⁶³ *Canadian Western Bank* at para. 27 – Volume I, Tab 6 of the AGBC BOA s.11; *Quebec* at para 29 – Volume I, Tab 21 of the AGBC BOA s.11.

⁶⁴ *Quebec* at para. 30 – Volume I, Tab 21 of the AGBC BOA s.11; *Kitkatla Band v. British Columbia (Minister of Small Business, Tourism and Culture)*, 2002 SCC 31, [2002] 2 S.C.R. 146, at paras. 56 [“Kitkatla”] – Volume I, Tab 12 of the AGBC BOA s.11.

⁶⁵ *Firearms Reference* at para. 26 – Volume I, Tab 36 of the AGBC BOA s.11; *Kitkatla* at paras. 54-55 – Volume I, Tab 12 of the AGBC BOA s.11; *Global Securities Corp. v. British Columbia (Securities Commission)*, 2000 SCC 21, [2000] 1 S.C.R. 494 at para. 23 – Volume I, Tab 10 of the AGBC BOA s.11.

⁶⁶ *Canadian Western Bank* at para. 29 – Volume I, Tab 6 of the AGBC BOA s.11.

⁶⁷ *Chatterjee* at para. 35 – Volume I, Tab 3 of the APP BOA.

⁶⁸ *Chatterjee* at para. 36 – Volume I, Tab 3 of the APP BOA.

the federal legislation to the extent that it “frustrates” the federal purpose.⁶⁹

51. If a statute in “form” falls within the enacting government’s head of power but in “substance” does not, the statute may be “colourable” and *ultra vires*. Caution must be exercised when considering colourability as a robust application of this doctrine “may lead the courts to exceed their role of determining the constitutionality of legislation and, instead, express disapproval of either the policy of the statute or the means by which the legislation seeks to carry it out”.⁷⁰ In ascertaining the purpose of the challenged provisions it is important not to confuse the law’s purpose with “the means chosen to achieve it”.⁷¹

52. Applying the above-framework to the IRP Scheme it is clear that the purpose of this legislation is the licencing of drivers and highway safety.

F) The IRP Scheme Regulates the Use of Highways and the Licencing of Drivers

53. Under a proper application of the division of powers analysis, the first step is to determine the “matter” of the IRP Scheme. In *Chatterjee*, this Court framed the question to be asked as “what is the essence of what the law does and how does it do it?”⁷² The Petitions Judge examined what the IRP Scheme does, and how it does it, and concluded that the purpose of the IRP Scheme is “the licencing of drivers, the enhancement of highway traffic safety, and the deterrence of persons from driving on highways when their ability is impaired by alcohol”.⁷³ This was confirmed on appeal: “[t]he extrinsic evidence, *Hansard* and legislative scheme itself provide a sound basis for the conclusion of the [Petitions Judge] that the purpose and effect of the legislation is to regulate the highways and to enhance public safety.”⁷⁴

54. The public safety purpose of the IRP Scheme is supported by the wording of the IRP Scheme’s provisions, both when read independently as well as when read in the context of the

⁶⁹ *Chatterjee* at paras. 36 and 42 – Volume I, Tab 3 of the APP BOA; *Rothmans, Benson & Hedges Inc v. SK*, 2005 SCC 13, [2005] 1 S.C.R. 188, at paras. 11-14 – Volume I, Tab 37 of the AGBC BOA s.11; *Canadian Western Bank* at paras. 69, 71-75 – Volume I, Tab 6 of the AGBC BOA s.11; *Multiple Access* at pp. 186-191 – Volume I, Tab 15 of the AGBC BOA s.11.

⁷⁰ *Quebec* at para. 31 – Volume I, Tab 21 of the AGBC BOA s.11.

⁷¹ *Quebec* at para. 29 – Volume I, Tab 21 of the AGBC BOA s.11.

⁷² *Chatterjee* at para. 16 – Volume I, Tab 3 of the APP BOA; See also *Sahaluk* at para. 118 – Volume I, Tab 38 of the AGBC BOA s.11.

⁷³ BCSC Reasons, at pp. 24 and 36, paras. 74 and 120.

⁷⁴ BCCA Reasons, at p. 202, para. 103.

MVA, and by the extrinsic evidence that was put before the Courts including *Hansard*. Both the Petitions Judge and the Court of Appeal reached the correct conclusion.

a. The Wording of the IRP Scheme Supports its Highway Safety Purpose

55. The IRP Scheme is one part of larger legislative whole focused on ensuring that highways in British Columbia are safe, in part by limiting the ability of drivers who have engaged in drinking and driving from continuing to do so under the terms of their driver's licence . The specific legislative provisions (ss. 215.41 to 215.51 of the *MVA*) are intended to swiftly remove drinking drivers from the road for various periods of time, thus reducing the risk to innocent users of the highways while ensuring that peace officers are able to continue with road enforcement as expeditiously as possible. This purpose is evident from examining the IRP Scheme as a whole and through an analysis of the various parts of the scheme.

56. Under the IRP Scheme, driving prohibitions take effect immediately upon being issued (ss. 215.41 and 215.43(3)). Controlling *when* a person can drive directly relates to highway safety and the terms and conditions of driver licencing. Section 215.46 allows for the impoundment of the driver's vehicle. Once again, controlling the accessibility of vehicles to individuals prohibited from driving directly relates to highway safety. Sections 215.41(3) and (4) provide for driving prohibitions for drivers who blow a "warn" or a "fail", or who refuse to provide a sample. Controlling *who* can drive directly relates to the terms and conditions of driver licencing and facilitates highway safety.

57. Further, there are a number of provisions in the *MVA* that support the position that the IRP Scheme was enacted as part of a larger regulatory scheme designed to improve highway safety through setting the terms and conditions of driver licencing . For instance, the *MVA* includes a number of licencing suspensions for such things as an unsatisfactory driving record (s. 93(1)), conviction of a motor vehicle related *Code* offence (ss. 98, 99, 232) and driving while prohibited (s. 95).

58. As found by the Petitions Judge and the Court of Appeal, the purpose of the IRP Scheme specifically, and the *MVA* generally, is highway safety and the licencing of drivers.

b. Extrinsic Evidence Supports the Highway Safety Purpose of the IRP Scheme

59. The extrinsic evidence also supports the public safety purpose of the IRP Scheme. Prior to the enactment of the IRP Scheme, it was widely recognized that despite the existence of impaired driving provisions in the *Code* and the existence of administrative sanctions for drinking and driving in all provinces, alcohol-related injuries and fatalities were increasing.

60. Between 2007 and 2009, this trend prompted the House of Commons Standing Committee on Justice and Human Rights to conduct a full review of the issue of impaired driving including examining “the *Criminal Code* sanctions for impaired driving and how they interrelate with provincial licencing measures”. Among the many recommendations of the Committee was that “the provinces and territories be encouraged to enhance their efforts in intervening at BAC’s lower than the *Criminal Code* level”.⁷⁵

61. The legislative intent of the IRP Scheme was highlighted during both first and second reading. In introducing the bill on April 27, 2010, the Minister of Public Safety and Solicitor General (the “Minister”) referred to the throne speech commitment to “introduce significant changes to reduce impaired driving and dangerous driving and improve public safety on our highways”. He further observed:

Of late we are sadly seeing an escalation in the incidents of impaired driving and all of the resulting tragedy that flows from that. The amendments to the impaired driving provisions will give police more tools at the roadside to remove impaired and dangerous drivers from the road as a means of reducing the body count on B.C. highways.⁷⁶

62. On second reading the Minister reinforced the public safety purpose of the IRP Scheme:

This bill, of course, deals with a number of amendments to the *Motor Vehicle Act* designed to increase and enhance road safety. [...]

Firstly, there is the stated desire and objective here to reduce the growing number of deaths and injuries resulting from alcohol and drug-related crashes [...].

In B.C. upwards of 130-plus individuals and their families last year were impacted in the most terrible of ways by impaired driving. I suppose most disturbing of all is the fact that

⁷⁵ Martin Affidavit, Vol. III, p. 574, paras. 73-74; Martin Affidavit, Exhibit ‘M’, Vol. IV, p. 750.

⁷⁶ Martin Affidavit, Vol. III, p. 575, para. 79; Martin Affidavit, Exhibit ‘O’, Vol. IV, p. 778-779.

after a period where society did recognize the horror and react by altering behaviour in a fairly significant way the trend lines of late have begun to move in the wrong direction. Those accidents and those deaths are going up. There are comprehensive surveys that examine these sorts of things, and they indicate that the number of alcohol-related accidents and deaths is on the increase.⁷⁷

63. The desired relationship between the IRP Scheme and the *Code* provisions was specifically addressed by the Minister when he stated:

The *Criminal Code* provisions exist. They will continue to exist. Whilst police will have additional tools - I think fair to say more immediate, more efficient tools - to deal with impaired driving, with swift and severe penalties available at the roadside, the prospect of facing *Criminal Code*-related procedures and sanctions does not disappear. In many instances it will still be the preferred route by which sanctions are brought to bear against drivers.⁷⁸

64. In its analysis of the division of powers issue, the Court of Appeal highlighted the unchallenged expert evidence of Professor Robert E. Mann that established, among other conclusions, the following:

- a. The research establishes that “administrative suspensions have strong and important specific and general deterrence effects in reducing drinking driving recidivism, collisions, injuries and fatalities”; and
- b. Administrative driving prohibitions, licencing actions, participation in remedial programs, and vehicle impoundment “significantly reduce recidivism rates”. Remedial programs such as the Responsible Driver Program and Ignition Interlock Program “provide evidence of a longer term positive impact in terms of reducing drinking and driving”.⁷⁹

65. The extrinsic evidence supports the finding that the IRP Scheme was enacted to address highway safety and driver licencing.

c. The Practical and Legal Effects of the IRP Scheme Support the Conclusion its Purpose is Highway Safety and Driver Licencing

66. The pith and substance analysis also involves examining the practical and legal effects of the challenged law. This examination is helpful in both “illuminating the core meaning of the

⁷⁷ Martin Affidavit, Vol. III, pp. 575-576, paras. 79-81; Exhibit “O”, Vol. IV, pp. 779-780.

⁷⁸ Martin Affidavit, Vol. III, pp. 575-576, paras. 79-81; Exhibit “O”, Vol. IV, pp. 779-780.

⁷⁹ BCCA Reasons at pp. 199-200, para. 100; Mann Affidavit, Vol. VII, Exhibit “C”, pp. 1281, 1301, 1305 and 1306, paras. 1, 30, and 37.

law” and determining whether the law is colourable. In assessing the effects of legislation as a tool for ascertaining its purpose, it is not helpful to overstate the effects or characterize them in a manner that predetermines the purpose. Rather, it is useful to examine the effects from the perspective of concrete questions such as, “[w]hose interests are affected and how? What does the challenged law require the subject to do?”⁸⁰

67. As to whose interests are affected and how, the IRP Scheme affects users of the highways and their family members that might have suffered from injury, death, or property loss had the provisions not been enacted. As noted in the AGBC Section 8 Factum, the number of serious alcohol-related motor vehicle injuries and deaths went down following the introduction of the IRP Scheme.⁸¹ The IRP Scheme also has an effect on the enormous and far-reaching financial costs associated with drinking and driving. As noted in the AGBC Section 8 Factum, “(d)inking-driving collisions account for one of the largest sources of preventable alcohol-related costs to Canadian society”.⁸² Though the AGBC recognizes that when undertaking a division of powers analysis this Court is not to question the policy choices of government or take into account whether legislation is effective in meeting its purpose, the evidence supports that drivers, passengers, and their families are positively affected by the IRP Scheme.⁸³

68. The IRP Scheme undoubtedly affects British Columbians with drivers’ licences that drink alcohol and drive. In 2010, 3.1 million people had a driver’s licence in the Province. Nearly one-quarter of British Columbians have admitted to some alcohol consumption before driving. More than 1 in 20 British Columbians admit to having driven while likely over the limit.⁸⁴ The IRP Scheme affects those drivers who might consider this risky behaviour but are otherwise deterred by the prospects of receiving an IRP.

69. The IRP Scheme also affects police and court resources. With the IRP Scheme, the

⁸⁰ *Sahaluk* at para. 118 – Volume I, Tab 38 of the AGBC BOA s.11.

⁸¹ Affidavit #1 of Stephen Martin (Sivia), sworn April 26, 2011, Joint Record, Volume VIII, at p. 1582, paras. 3-6 and Exhibits “B”, “C”, and “D”, pp. 1587-1595 [Martin Affidavit #2].

⁸² Mann Affidavit, Vol. VIII, Exhibit “C”, at p. 1286, para. 7.

⁸³ *Quebec* at para. 38 – Volume I, Tab 21 of the AGBC BOA s.11.

⁸⁴ Martin Affidavit, Vol. III, at p. 562-563, paras. 7 and 12-13; Exhibit “B”, p. 593.

amount of police time needed to process drinking drivers is reduced.⁸⁵

70. The AGBC agrees with the Appellants that the IRP Scheme affects people who have their driving privileges revoked as a result of blowing a “warn” or a “fail” into an ASD (or refusing to blow) and their families. However, the AGBC disagrees with the Appellants’ characterization of the effects on this group of people. The Appellants have not objectively set out the practical consequences of an IRP. These consequences are: (1) they will no longer have a driver’s licence and will be immediately prohibited from driving for a period ranging between 3 and 90-days; (2) they must begin serving their driving prohibition from the moment it is issued but can challenge it before an adjudicator, and if unsatisfied with the administrative decision, may seek judicial review; (3) they will be required to pay a monetary penalty and licence reinstatement fee; (4) for 30 or 90-day prohibitions their vehicle will be impounded and for shorter prohibitions may be impounded; and (5) they will likely be required to participate in the Responsible Driver Program and Ignition Interlock.⁸⁶ It is important to recall, however, that these individuals will not endure the stress of a criminal proceeding, nor will they have the stigma of a criminal conviction and a criminal record.

71. Additionally, unlike criminal impaired driving legislation, an individual subject to an IRP is not faced with the possibility of a minimum fine of \$1,000, incarceration for a period of up to 18 months (if prosecuted as a summary conviction offence) or 5 years if prosecuted as an indictable offence. This individual will also not be subject to the minimum one year driving suspension required by the offence provisions of the *MVA*.

72. Undoubtedly, a person issued an IRP is affected because the loss of driving privileges limits mobility. This may affect their employment, or activities they wish to partake in, and have an impact on their family members. However, it is important to remember that driving is a privilege, as explained by the Alberta Court of Appeal in *Thomson v. Alberta (Transportation and Safety Board)*:

⁸⁵ Martin Affidavit, Exhibit “M”, Vol. IV, p. 731.

⁸⁶ As noted above, the Petitions Judge noted at para. 30 that although the decision of the Superintendent to refer a driver to remedial measures is discretionary, the evidence at the hearing was that drivers who registered a ‘fail’ were referred as a matter of course.

Licence suspensions are administrative in nature and while suspension of a licence may create a significant inconvenience, it does not violate a person's liberty rights nor does it criminalize anti-social behaviour. Driving a motor vehicle remains a privilege in a civil society and while often taken for granted, carries with it obligations and qualifications which, if violated, may result in licence suspension or revocation.⁸⁷

73. In the final analysis the consequences set out above relate to the ability to drive a vehicle and, as such, do not amount to criminal law.

G) Property and Civil Rights – Section 92(13)

74. Regulation of highway safety and licencing of drivers is properly placed in section 92(13), Property and Civil Rights in the Province.⁸⁸ The regulation of drinking and driving in the provinces has highway safety and licencing as its dominant purpose. There is nothing in the IRP Scheme that would take it outside of the previous decisions of this Court.

H) The IRP Scheme is not a Colourable Attempt to Legislate Criminal Law

75. The Appellants assert that the IRP Scheme is a colourable attempt to legislate in the area of criminal law. They argue that the IRP Scheme “targets the *Criminal Code* and *Charter* rights for removal”, principally by conferring the discretion on peace officers to pursue an administrative sanction based on an ASD result, rather than pursuing a criminal investigation in which the ASD result would not constitute evidence at trial.

76. The Appellants have not established the IRP Scheme is colourable. As stated in *Ward*, a law will be found to be colourable when “the law in form appear[s] to address something within the legislature’s jurisdiction, but in substance deal[s] with a matter outside that jurisdiction”.⁸⁹ In asserting the legislation is colourable, the Appellants confuse the ‘purpose’ of the legislation with what they assert is the means used by the Legislature to carry out that purpose.

77. The purpose of the IRP Scheme is to promote public safety on the roadways by prohibiting drivers from driving after they have engaged in the high-risk behaviour of drinking

⁸⁷ *Thomson* at para. 26 – Volume I, Tab 40 of the AGBC BOA s.11.

⁸⁸ The regulation of highway safety could also be placed in 92(14) The Administration of Justice in the Province, or (16) Generally all Matters of a merely local or private Nature in the Province.

⁸⁹ *Ward* at paras. 17 and 26 – Volume I, Tab 42 of the AGBC BOA s.11; See also *Quebec* at para. 31 – Volume I, Tab 21 of the AGBC BOA s.11.

and driving. The means by which British Columbia has sought to accomplish this objective is through imposing a driving prohibition on the basis of an ASD administered at the roadside. The fact that the means of accomplishing this objective also forms part of a peace officer's investigative tools under the *Code* does not change the nature or the purpose of the IRP Scheme.

78. This Court's decision in *Ward* provides a useful example of how the validity of legislation cannot be determined by focusing on the means chosen to carry out the purpose. *Ward* involved a challenge to the *vires* of federal legislation that prohibited the sale of whitecoat and blueback seals. Mr. Ward argued that the federal regulation was about "sales" and therefore it was *ultra vires* the federal government's power to legislate in relation to sea coast and inland fisheries and instead, fell within the provincial power over property and civil rights. The Chief Justice noted:

The argument amounts to saying that because the legislative measure is a prohibition on sale, it must be in pith and substance concerned with the regulation of sale. This confuses the purpose of the legislation with the means used to carry out that purpose. Viewed in the context of the legislation as a whole and the legislative history, there is nothing to suggest that Parliament was trying to regulate the local market for trade of seals and seal products. Ward's argument that s. 27 is directed at regulating an already processed product because the seals are skinned and the meat preserved on the vessel similarly confuses the purpose of s. 27 with the means chosen to achieve it.⁹⁰

79. The purpose of the IRP Scheme is to ensure highway safety - this is so whether the means chosen to meet this purpose are through a licencing scheme that immediately prohibits drivers who blow a "fail" or "warn" into an ASD (or refuse to blow) or by some other means. The Appellants attempt to distinguish the decisions of this Court that have upheld the validity of provincial legislation dealing with drinking and driving by pointing out that the means selected in the IRP Scheme are different than the means selected in the other schemes (in particular no 21-day period to challenge the prohibition).⁹¹ As confirmed in *Ward*, this is not a valid method of determining the subject matter of a legislative scheme. The IRP Scheme is as much about highway safety as the schemes examined in *Egan* and *Ross*.⁹²

80. The Appellants characterize the immediacy of the driving prohibition as a severe penalty

⁹⁰ *Ward* at para. 25 – Volume I, Tab 42 of the AGBC BOA s.11; See also: *Quebec* at para 38 – Volume I, Tab 21 of the AGBC BOA s.11; As further discussed below, in *Ward* those subject to the regulation could be imposed penalties of \$100,000 and imprisonment.

⁹¹ Appellants' Factum, at paras. 69-73.

⁹² *Egan, supra* – Volume I, Tab 20 of the AGBC BOA s.11; *Ross, supra* – Volume I, Tab 18 of the APP BOA.

arguing that, “[i]t is something drivers should fear being caught up in because now they can no longer put the matter off in a lengthy criminal proceeding.”⁹³ The practical effect of the “immediacy” of the prohibition is that the driver who blows a “warn” or a “fail”, or refuses to provide a breath sample is immediately prohibited from engaging in the privilege of driving. The IRP Scheme utilizes swiftness not to punish drivers, but to maximize highway safety for all users of the road.⁹⁴

81. In a similar vein, the Appellants wrongly focus on alleged procedural and *Charter* breaches rather than determining the essence of the IRP Scheme. The Appellants assert that the true purpose of the IRP Scheme is to remove *Charter* and procedural rights for the sole purpose of entitling drivers to less due process.⁹⁵ Even if these assertions were true, which the AGBC says they are not, the alleged effect of violating a *Charter* right has no place in the division of powers analysis. The division of powers analysis must be focused on determining the subject matter or essence of the legislation. The subject matter for the purposes of the division of powers analysis is not impacted by potential *Charter* breaches.

82. In any event, the Appellants wrongly characterize the expanded use of an ASD in the context of the IRP Scheme as the removal of a *Charter* protection. The Appellants imply that the limited use of an ASD in a criminal investigation arises from the alleged fact the device is not reliable, thereby suggesting that this limited use reflects drivers’ *Charter* rights. This position is incorrect. The Appellants themselves note that limited use of the ASD result in the criminal context arises from the fact the sample is gathered at the roadside while a driver’s right to counsel under s. 10(b) of the *Charter* is suspended.⁹⁶ This is the true rationale for the limited use to which an ASD may be put in a criminal investigation and subsequent prosecution. Roadside screening is an essential tool for promptly and accurately determining whether a driver may be affected by alcohol, but one which is incompatible with the right to contact counsel. In the criminal context, evidence gathered from an accused before he or she has had the right to contact counsel would normally be subject to exclusion. However, the importance of roadside screening

⁹³ Appellants’ Factum, at para. 62.

⁹⁴ *Gonzales v. Alberta*, 2001 ABQB 757, [2001] A.J. No. 1159, at paras. 38, 54-59 [“*Gonzales*”] – Volume I, Tab 11 of the AGBC BOA s.11; *Thomson* at paras. 24-30 – Volume I, Tab 40 of the AGBC BOA s.11; *Sahaluk* at para. 164 – Volume I, Tab 38 of the AGBC BOA s.11.

⁹⁵ Appellants’ Factum at para. 54.

⁹⁶ Appellants’ Factum at para. 25.

justifies suspending the right to counsel, in part, because the results are limited to supplying grounds for a breath demand in a criminal investigation and cannot be introduced as evidence in a criminal prosecution.⁹⁷ There is no legal basis for the Appellants' claim that the limited use of an ASD in the criminal context arises from a reliability concern or that this limited use constitutes the removal of a *Charter* right.

83. In attempting to establish a colourable purpose, the Appellants draw this Court's attention to the Crown Counsel Policy Manual submitted for the proposition that "drivers with no prior impaired driving charges who registered a 'fail' reading at the roadside were generally not prosecuted under the *Code* if there was no personal injury or property damage".⁹⁸ Thus, the Appellants argue, the IRP Scheme was *intended* to replace the *Code*.⁹⁹

84. Neither the Petitions Judge nor the Court of Appeal found this extrinsic evidence persuasive. The Petitions Judge found that it was but one factor to consider in determining the pith and substance of the legislation.¹⁰⁰ After reviewing the Crown Counsel Policy Manual, the Court of Appeal did not agree with the Appellants' characterization of the evidence: "[i]t seems to me that the best the appellants can make of this evidence is that in certain circumstances the Crown prefers not to charge under the *Criminal Code*, but to be content with the imposition of the provincial administrative consequences of drinking and driving. None of this supports the contention that the [IRP] was designed to displace the *Criminal Code*".¹⁰¹ Indeed, in our federal state incidental intrusion by a province into the federal sphere of jurisdiction is both expected and acceptable.¹⁰²

85. The IRP Scheme does not in form or substance attempt to limit Canada's ability to legislate regarding impaired driving or to enact criminal law under the guise of imposing a driving prohibition. It is clear from an analysis of the provincial and federal schemes that the Province intended for police to have recourse to the tools available under both the *MVA* and the *Code* in investigating drinking and driving. As found by both the Petitions Judge and the Court

⁹⁷ See: *R. v. Thomsen*, [1988] 1 S.C.R. 640, [1988] S.C.J. No. 31 – Volume II, Tab 37 of the AGBC BOA s. 8.

⁹⁸ BCCA Reasons at pp. 193-194, para. 83.

⁹⁹ Appellants' Factum at paras. 10 and 11.

¹⁰⁰ BCSC Reasons at p. 34, para. 110.

¹⁰¹ BCCA Reasons at pp. 194-195, paras. 86-88.

¹⁰² *Chatterjee* at para. 29 – Volume I, Tab 3 of the APP BOA.

of Appeal, the legislation, *Hansard*, extrinsic evidence, and a consideration of the legal and practical effects all establish that the purpose of the IRP Scheme is to regulate the highways in British Columbia and enhance public safety. The IRP Scheme is valid provincial legislation.

2) Section 11 of the Charter

A) Overview of AGBC Position with Respect to Section 11

86. Section 11 does not apply because the IRP Scheme does not create an “offence”. This Court noted in *Wigglesworth* that “proceedings undertaken to determine fitness to obtain or maintain a licence” are not offences for the purpose of s. 11.¹⁰³ The IRP Scheme falls within the scope of this holding since it determines whether a driving prohibition should be issued and subsequently confirmed or revoked (or whether a driver’s licence should continue to be cancelled or not). This holding is dispositive of the s. 11 issue in this case.

87. In any event, the IRP Scheme is not “by nature” a penal or criminal proceeding, nor does the IRP Scheme impose “true penal consequences”. It bears none of the hallmarks of the criminal process. Moreover, a prohibition from driving for violating the terms of one’s licence, coupled with a prescribed monetary penalty, cannot be reasonably described as a true penal consequence.

88. Further, the Appellants’ suggestion that the *Wigglesworth* “by nature” test be refined to focus only on the public nature of the legislation should be rejected as it overshoots the purpose of s. 11.

B) Section 11 Applies to Criminal Law Processes and Not Licencing Schemes

89. In determining whether s. 11 applies to the IRP Scheme it is important to focus on the specific words used in s. 11 as this text holds the key to the purpose of the section. To be an “offence” a matter must either be by nature a criminal, quasi-criminal, or penal proceeding, or “lead to a true penal consequence”.¹⁰⁴ As noted by Wilson J. in *Wigglesworth*, the wording of s.

¹⁰³ *Wigglesworth* at p. 560 – Volume I, Tab 35 of the AGBC BOA s.11.

¹⁰⁴ *Martineau v. M.N.R.*, 2004 SCC 81, [2004] 3 S.C.R. 737, at para. 19 [“*Martineau*”] – Volume I, Tab 14 of the AGBC BOA s.11; *Wigglesworth* at p. 559, *per* Wilson J. – Volume I, Tab 35 of the AGBC BOA s.11.

11 makes clear that it was intended to apply to criminal or quasi-criminal proceedings:

Section 11 contains terms which are classically associated with criminal proceedings: "tried", "presumed innocent until proven guilty", "reasonable bail", "punishment for the offence", "acquitted of the offence" and "found guilty of the offence". Indeed, some of the rights guaranteed in s. 11 would seem to have no meaning outside the criminal or quasi-criminal context.¹⁰⁵

90. These rights were developed in the criminal law context and reflect quintessentially criminal law principles. The fundamental rights protected by s. 11, focussed as they are on criminal law, come with an important qualifier; they apply only when a person is "charged with an offence". A person is "charged" within the meaning of s. 11 "when an information is sworn alleging an offence against him, or where a direct indictment is laid against him when no information is sworn."¹⁰⁶ The wording of s. 11 makes it clear that the section is intended to ensure that people charged with "the most serious offences known to our law" have constitutionally protected procedural safeguards.¹⁰⁷

91. In *Wigglesworth*, this Court long ago recognized the fundamental distinction between criminal proceedings and proceedings undertaken to determine fitness to have or maintain a licence. The latter do not engage s.11:

There is also a fundamental distinction between proceedings undertaken to promote public order and welfare within a public sphere of activity and proceedings undertaken to determine fitness to obtain or maintain a licence. Where disqualifications are imposed as part of a scheme for regulating an activity in order to protect the public, disqualification proceedings are not the sort of "offence" proceedings to which s. 11 is applicable. Proceedings of an administrative nature instituted for the protection of the public in accordance with the policy of a statute are also not the sort of "offence" proceedings to which s. 11 is applicable.¹⁰⁸

92. The notion that licencing schemes should not be captured by s. 11 is consistent with this Court's caution against importing s. 11 rights into civil or administrative proceedings. As noted by Bastarache J. in discussing s. 11(b):

¹⁰⁵ *Wigglesworth*, at pp. 554-555, per Wilson J – Volume I, Tab 35 of the AGBC BOA s.11.

¹⁰⁶ *R. v. Kalanj*, [1989] 1 S.C.R. 1594, [1989] S.C.J. No. 71, at p. 1607 per McIntyre J. Wilson and Lamer JJ. dissented and held that "a person was charged 'when the impact of the criminal process is felt by the accused', which occurred at the time of the arrest" – Volume I, Tab 23 of the AGBC BOA s.11.

¹⁰⁷ *Wigglesworth* at p. 558, per Wilson J. – Volume I, Tab 35 of the AGBC BOA s.11; *Sahaluk* at paras. 361-363 – Volume I, Tab 38 of the AGBC BOA s.11.

¹⁰⁸ *Wigglesworth* at p. 560, per Wilson J. – Volume I, Tab 35 of the AGBC BOA s.11.

The qualifier to this right is that it applies to individuals who have been "charged with an offence". The s. 11(b) right therefore has no application in civil or administrative proceedings. This Court has often cautioned against the direct application of criminal justice standards in the administrative law area. We should not blur concepts which under our *Charter* are clearly distinct.¹⁰⁹

93. One important reason not to blur such concepts is recognition of the fact that the specific rights protected by s.11 may be inconsistent with the purposes of administrative schemes. For example, the right to be presumed innocent, while a "hallowed principle lying at the very heart of criminal law,"¹¹⁰ has no place in a licencing scheme. Licencing schemes are not about guilt, innocence, or the removal of fundamental liberties. By definition, those engaged in a licenced activity must be required to periodically confirm that they are engaged in the activity in accordance with the terms of their licence. This is the rationale justifying random vehicle stops under the *Charter*: only through the random stop of a vehicle may a driver's fitness and entitlement to drive be confirmed.¹¹¹ The existence of a right to be presumed innocent in the context of a licencing scheme would raise intractable problems in ensuring that individuals comply with the terms of their licences at the expense of public safety.

C) The By Nature Test

94. To constitute an "offence" for the purposes of s. 11, a proceeding must either be by nature a criminal, quasi-criminal, or penal proceeding.¹¹² The question of whether a proceeding is by its nature criminal requires considering three factors: (1) the objectives of the legislation, (2) the purpose of the sanction, and (3) the process leading to imposition of the sanction.¹¹³ The application of these three factors supports a finding that s. 11 is not "by nature" criminal law.

a. *The Licencing of Drivers and the Promotion of Highway Safety is not by Nature Criminal*

95. As recognized by the Petitions Judge and the Court of Appeal, the objective of the *MVA* is

¹⁰⁹ *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307, at para. 88 – Volume I, Tab 2 of the AGBC BOA s.11.

¹¹⁰ *R. v. Oakes*, [1986] 1 S.C.R. 103, [1986] S.C.J. No. 7, at pp. 119-120 ["*Oakes*"] – Volume I, Tab 28 of the AGBC BOA s.11.

¹¹¹ *R. v. Ladouceur*, [1990] 1 S.C.R. 1257, [1990] S.C.J. No. 53, at 1284 – Volume I, Tab 24 of the AGBC BOA s.11.

¹¹² *Martineau* at para.19 – Volume I, Tab 14 of the AGBC BOA s.11; *Wigglesworth* at p. 560 – Volume I, Tab 35 of the AGBC BOA s.11.

¹¹³ *Martineau* at para. 24 – Volume I, Tab 14 of the AGBC BOA s.11.

not the suppression of crime (as the Appellants allege), but “the licencing of drivers, the enhancement of highway traffic safety and the deterrence of persons from driving on highways when their ability to drive is impaired by alcohol”.¹¹⁴ The IRP Scheme is designed to protect the public from those who choose to drink and drive. This objective is supported by a purposive and contextual review of the *MVA*. This objective was recognized in *Egan* in relation to similar legislation and by this Court and other courts in the many cases that followed *Egan*.¹¹⁵

b. The Purpose of the IRP Scheme Sanctions is to Promote Highway Safety and is not by Nature Criminal

96. Both the Petitions Judge and the Court of Appeal found that the purpose of the sanctions imposed by the IRP Scheme is the enhancement of public safety, not to redress the wrong done to society.¹¹⁶

97. The Appellants argue that the licencing aspects of a scheme should not “insulate” it from s. 11 if it also has an aspect that relates to the suppression of crime and the promotion of public order and welfare. This argument ignores the fact that administrative regulatory schemes can legitimately use deterrence as a regulatory measure without creating “offences”. As noted by this Court in *Martineau v. M.N.R.* (“*Martineau*”): “actions in civil liability and disciplinary proceedings, which are also aimed at deterring potential offenders, nevertheless do not constitute criminal proceedings”.¹¹⁷ Both criminal prohibitions and administrative sanctions aim to protect the public. Criminal sanctions differ from administrative sanctions, however, in that only criminal sanctions involve redressing a wrong done to society by applying the concepts of “retribution” and “denunciation”.¹¹⁸

98. The concepts of “retribution” and “denunciation” involve “moral culpability” and are used in the criminal law in addition to the “utilitarian considerations related to deterrence and

¹¹⁴ BCSC Reasons at pp. 24 and 36, paras. 74 and 120; BCCA Reasons at p. 210, para. 134. The Appellants at para. 80 of their factum assert that “there is no dispute that [the IRP Scheme] targets criminal behaviour and seeks to suppress crime”. This is not accurate. The appropriate characterization of the IRP Scheme is in dispute.

¹¹⁵ See footnotes 30 to 36.

¹¹⁶ BCSC Reasons at p. 51, paras. 180-182; BCCA Reasons at p. 213, para. 146.

¹¹⁷ *Martineau* at para. 38 – Volume I, Tab 14 of the AGBC BOA s.11; See also *Cartaway Resources Corp. (Re)*, [2004] 1 S.C.R. 672 at paras. 58-62 – Volume I, Tab 7 of the AGBC BOA s.11, and *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 534 at para. 59 – Volume I, Tab 4 of the AGBC BOA s.11.

¹¹⁸ BCCA Reasons at pp. 212-213, para. 142, citing *R. v. M.(C.A.)*, [1996] 1 S.C.R. 500, 182 A.R. 30 – Volume I, Tab 27 of the AGBC BOA s.11.

rehabilitation”.¹¹⁹ Retribution is integral to the “fundamental requirement that a sentence imposed be ‘just and appropriate’ under the circumstances”.¹²⁰ This Court noted retribution “offers an essential conceptual link between the attribution of criminal liability and the imposition of criminal sanctions” [emphasis in original].¹²¹ Retribution differs from denunciation in that retribution is used to “reflect the moral blameworthiness of the particular offender” whereas denunciation is about “condemnation of that particular offender’s conduct” [emphasis in original].¹²²

99. None of the sanctions imposed by the IRP Scheme have as their purpose “retribution” or “denunciation”. They are not focused on the moral culpability of a drinking driver or society’s condemnation of their conduct. The clear purpose of the IRP Scheme is to swiftly remove a public safety risk, namely, those who drink and drive. Similarly, the purpose of the impoundment provisions is to reduce the risk that a person will again drink and get behind the wheel of his or her car. The monetary penalties are for prescribed amounts and as such, allow no room for the application of retribution or denunciation.¹²³ A driver does not pay a larger fine or serve a longer prohibition because his or her behaviour exhibited greater moral wrongdoing. The Responsible Driver Program includes education or counselling designed to impress upon drivers the ramifications of drinking and driving. Interlock is also a preventative measure designed to reduce the risk of individuals driving after consuming alcohol. It serves as a constant reminder of the need to modify risky behaviour when it comes to drinking and driving.

100. Considered individually, the IRP Scheme sanctions are aimed at dissuading drinking drivers from engaging in behaviors that create risk for themselves, their passengers and all other users of the streets, roads, and highways. Collectively, these sanctions work to deter, educate, and ultimately improve highway safety. The sanctions are not focussed on punishment but on protecting the public.¹²⁴

¹¹⁹ *R v. M.(C.A.)* at para. 79 – Volume I, Tab 27 of the AGBC BOA s.11.

¹²⁰ *R v. M.(C.A.)* at para. 79 – Volume I, Tab 27 of the AGBC BOA s.11.

¹²¹ *R v. M.(C.A.)* at para. 79 – Volume I, Tab 27 of the AGBC BOA s.11.

¹²² *R v. M.(C.A.)* at para. 81 – Volume I, Tab 27 of the AGBC BOA s.11.

¹²³ BCSC Reasons at pp. 48 and 52, paras. 171 and 183.

¹²⁴ BCSC Reasons at p. 50, para. 178.

c. The Process Leading to the Imposition of the Sanctions under the IRP Scheme is not by Nature Criminal

101. The process used in the IRP Scheme has a number of steps:

- First, the driver provides a breath sample that registers a “fail” or a “warn” on an ASD, or fails or refuses to provide a breath sample;
- Second, the peace officer issues the appropriate Notice of Prohibition (the “Notice”) and sends a copy of the Notice and a report to the Superintendent’s office along with any other supporting documentation; if the driver does not apply to the Superintendent for a review of the Notice, that is the end of the process;
- Third, if the driver applies for a review of the Notice, the Superintendent’s delegate, an adjudicator, receives any submissions, evidence and documentation upon which the driver intends to rely;
- Fourth, the adjudicator decides on all of the evidence whether the statutory conditions exist to confirm or to revoke the Notice and provides reasons;
- Fifth, if revoked, the prohibition is removed from the driving record and the penalties and any additional consequences required are not imposed. If confirmed, the driver may seek judicial review of the decision.

102. In examining the process leading to the sanctions, the focus must be on the nature of the proceeding, not the nature of the prohibited conduct.¹²⁵ This is because the same conduct can appropriately give rise to a number of consequences. As described by the Saskatchewan Court of Appeal and cited with approval by this Court in *Wigglesworth*:

A single act may have more than one aspect, and it may give rise to more than one legal consequence. It may, if it constitutes a breach of the duty a person owes to society, amount to a crime, for which the actor must answer to the public. At the same time, the act may, if it involves injury and a breach of one's duty to another, constitute a private cause of action for damages, for which the actor must answer to the person he injured.¹²⁶

103. A single piece of legislation addressing the same conduct may provide for administrative processes that do not engage s. 11 protections, and penal processes that do engage these protections. For example, the *Customs Act* considered in *Martineau* provided for both civil and

¹²⁵ *Martineau* at paras 30-31 – Volume I, Tab 14 of the AGBC BOA s.11.

¹²⁶ *Wigglesworth* at p. 549 – Volume I, Tab 35 of the AGBC BOA s.11; see also *R. v. Shubley*, [1990] 1 S.C.R. 3, 65 D.L.R. (4th) 193 *per* McLachlin J. at para. 34 – Volume I, Tab 31 of the AGBC BOA s.11 and *Martineau* at para. 32 – Volume I, Tab 14 of the AGBC BOA s.11.

penal consequences for violations of customs law: a person alleged of making false statements could face the administrative process of a notice demanding payment, or a criminal prosecution by way of summary conviction or indictment, or both. This Court found that the administrative process did not engage s. 11 even though penal provisions existed for the same conduct.¹²⁷

104. As with the *Customs Act* at issue in *Martineau*, there are sanctions in the *MVA* that attract the protections of s. 11 and those that do not. For instance, s. 224 of the *MVA* expressly makes it an offence to drive with a BAC over .08 and contemplates incarceration as a possible penalty. Section 11 applies to s. 224 of the *MVA*. However, s. 11 does not apply to the sanction of an IRP or IRP Scheme sanctions. The fact that the same conduct may result in a *Code* conviction, an *MVA* offence, a licence cancellation or suspension, a driving prohibition, or civil damages does not make the IRP Scheme criminal in nature.

105. In *Martineau*, one of the factors this Court considered in deciding that the *Customs Act* provisions in issue did not engage s. 11 was that the process did not resemble a criminal prosecution.¹²⁸ Like the scheme in *Martineau*, no driver under the IRP Scheme is charged either criminally or under the *MVA*. No information is laid against a driver. No one is arrested. No one is summoned to appear before a court of criminal jurisdiction. No one is convicted of a crime and no one loses his or her driver's licence for as long as one year.

106. The Appellants criticize the usefulness of examining the process leading to the imposition of the sanctions, arguing that such a focus allows governments to avoid s. 11 rights by removing the formal appearance of criminal-like proceedings. Following from this proposition, the Appellants assert the British Columbia courts gave undue weight to the process leading to an IRP. In suggesting that minimal attention be paid to the "process leading to the sanction" the Appellants ignore: (1) the purpose of s. 11, as reflected in its text, is the guarantee of procedural rights in the criminal context; (2) the same conduct can give rise to different consequences; and, importantly, (3) the examination of the process leading to the imposition of the sanction is but one part of the test to determine whether a legislative scheme creates an "offence". The inclusion of "true penal consequences", regardless of the nature of the process, prevents

¹²⁷ *Martineau* at paras. 26-29 – Volume I, Tab 14 of the AGBC BOA s.11.

¹²⁸ *Martineau* at para. 45 – Volume I, Tab 14 of the AGBC BOA s.11.

legislatures from enacting “offences” without s. 11 safeguards. Such an approach recognizes that true penal sanctions - sanctions designed not only for deterrence but for retribution and denunciation - will attract s. 11. For example, s. 11 would be engaged if a province enacted a scheme that in addition to a driving prohibition also imposed imprisonment.

107. The Appellants point out that the Province allows for a provincial court trial in the case of the driver who runs a yellow light.¹²⁹ In the case of traffic infractions, however, s. 11 only applies because the Legislature chose to treat these matters as regulatory offences rather than addressing them in an administrative context.¹³⁰ The fact that the Province has adopted a regulatory offence model for addressing certain traffic offences does not preclude the Province from adopting an administrative scheme in relation to drinking and driving. In any event, there may be reason to revisit the notion that s. 11 applies to traffic offences by definition. As noted by Aylward and Ritacca in their article, “*In Defence of Administrative Law: Procedural Fairness for Administrative Monetary Penalties*”, “when a fine is of limited amount and does not attract any stigma, it becomes entirely disproportionate to require the proceedings to take place in accordance with the rigours of s. 11”.¹³¹

108. Consideration of the nature of the proceedings leading to the sanction should remain a part of the test in identifying those matters to which s. 11 applies. The less the process looks like a criminal prosecution, the less likely s. 11 is to apply. This is consistent with the approach taken in determining the common law procedural protections required in various administrative law contexts.

D) The IRP Scheme Does Not Impose Penal Consequences

109. Section 11 will also be engaged when legislation imposes a true penal consequence: “imprisonment or a fine which by its magnitude would appear to be imposed for the purpose of redressing the wrong done to society at large rather than to the maintenance of internal discipline

¹²⁹ Appellants’ Factum, at para 86.

¹³⁰ Violation tickets are considered an “information” for the purposes of the *Offence Act*, R.S.B.C. 1996, c. 338, s. 1 – Volume II, Tab 53 of the AGBC BOA s. 11.

¹³¹ Stephen Aylward and Luisa Ritacca, “In Defence of Administrative Law: Procedural Fairness for Administrative Monetary Penalties”, (2015) 28 Can. J. Admin. L. & Prac. 35, at p. 8 [“Aylward”] – Volume II, Tab 58 of the AGBC BOA s.11.

within the limited sphere of activity.”¹³² The Appellants make no submissions on this branch of the test presumably because they recognize that the IRP Scheme does not impose true penal consequences.

110. The *MVA* stipulates that the maximum monetary penalty allowable is \$500 (s. 215.44(2)). However, as recognized by the Petitions Judge the maximum cost that may be imposed by the state on a driver subject to the IRP Scheme is \$4,060.¹³³ The Petitions Judge considered all of the possible consequences to a driver under the IRP Scheme: “the prohibition, the costs associated with re-instating the licence, towing, storage, remedial programs, the interlock device and the automatic penalty.” As the Petitions Judge observed, driving is a privilege and not a right. The removal of this privilege is not a true penal consequence.¹³⁴ The Court of Appeal agreed. The cumulative effects of all of the sanctions imposed by the IRP Scheme do not reach a magnitude that would require the penalties to garner the procedural protections of s. 11.

111. A number of courts have considered whether s. 11 is engaged in the context of provincial administrative driving schemes and have held that as no “offence” is created, s. 11 is not engaged.¹³⁵ The Petitions Judge and the Court of Appeal were correct to find that s. 11 does not apply to the IRP Scheme.¹³⁶

E) Extending s. 11 to Legislation with a Public Purpose Would Overshoot its Purpose

112. The Appellants propose that the test for determining whether s. 11 is engaged be refined. They suggest that courts should ignore the analysis on the “process leading to the sanction” or whether the provisions engage “true penal consequences” and focus instead on the following words from *Wigglesworth*: “if a particular matter is of a public nature intended to promote public order and welfare within a public sphere of activity, then the matter is the kind of matter which

¹³² *Wigglesworth* at p. 561 – Volume I, Tab 35 of the AGBC BOA s.11; *Martineau* at para. 57 – Volume I, Tab 14 of the AGBC BOA s.11; *R. v. Rodgers*, 2006 SCC 15, [2006] 1 S.C.R. 554, at para. 61 *per* Charron J. [“*Rodgers*”] – Volume I, Tab 30 of the AGBC BOA s.11.

¹³³ This is based on a driver who receives a “fail” or refusal and is referred to both Responsible Driver and Interlock.

¹³⁴ BCSC Reasons at p. 47, paras. 168-169; BCCA Reasons at p. 208, para. 127.

¹³⁵ *Gonzales* at para. 67 – Volume I, Tab 11 of the AGBC BOA s.11; *R. v. Leclair* (1990), 67 Man. R. (2d) 265 (Man. Q.B.) – Volume I, Tab 25 of the AGBC BOA s.11; *Sigurdson v. British Columbia*, 2003 BCCA 535, [2003] B.C.J. No. 2440, at para. 17 – Volume I, Tab 39 of the AGBC BOA s.11; *Sahaluk* at paras. 353-363 – Volume I, Tab 38 of the AGBC BOA s.11.

¹³⁶ *Martineau*, *supra* – Volume I, Tab 14 of the AGBC BOA s.11; BCSC Reasons at pp. 39-41, and 45-52, paras. 138-150 and 160-184; BCCA Reasons at pp. 203-207, paras. 108-124.

falls within s. 11".¹³⁷

113. Applying s. 11 to administrative proceedings which do not impose criminal penalties overshoots the purpose of s. 11. The need for the protections outlined in s. 11 is occasioned by the seriousness of the consequences that may result from a proceeding. However inconvenient the loss of driving privileges and related monetary and other penalties may be, they cannot be reasonably described as true penal consequences. Further, to find that the only legal consequences for wrongful conduct that constitutes a crime is a criminal prosecution ignores the important purposes served by other legal processes. British Columbians are entitled to the benefits of regulatory protections, such as safer highways, afforded to them by sanctions imposed by way of administrative processes, such as licence suspensions.

114. Suggesting that s. 11 applies to all legislation with a public purpose is too broad to embody the purpose of s. 11.¹³⁸ Both criminal law schemes and administrative law schemes will necessarily have a public purpose. Administrative laws, including licencing schemes, are designed specifically to regulate most, if not every, aspect of our lives:

It is difficult to think of an aspect of our lives that is not regulated for our benefit and for the protection of society as a whole. From cradle to grave, we are protected by regulations; they apply to the doctors attending our entry into this world and to the morticians present at our departure. Every day, from waking to sleeping, we profit from regulatory measures which we often take for granted. On rising, we use various forms of energy whose safe distribution and use are governed by regulation. The trains, buses and other vehicles that get us to work are regulated for our safety. The food we eat and the beverages we drink are subject to regulation for the protection of our health.¹³⁹

115. Under the Appellants' test, legislation with a public focus that prohibits activity and imposes a sanction would automatically engage s. 11. This is untenable; the public purpose

¹³⁷ Appellants' Factum, at para. 88.

¹³⁸ Aylward at p. 9 – Volume II, Tab 58 of the AGBC BOA s.11.

¹³⁹ *R. v. Wholesale Travel Group*, [1991] 3 S.C.R. 154 at p. 221, [1991] S.C.J. No. 79 at p. 221, *per* Cory and L'Heureux-Dube J.J. – Volume I, Tab 33 of the AGBC BOA s.11; *Gordon v. British Columbia*, 2002 BCCA 224, 166 B.C.A.C. 285, at paras. 25-26 – Volume I, Tab 14 of the AGBC BOA s.8; *Nagra* at para. 26 – Volume I, Tab 16 of the AGBC BOA s.11.

should be a necessary but not a sufficient condition.¹⁴⁰

116. Although administrative proceedings and criminal proceedings both have public purpose goals, as discussed above, they are fundamentally different. The nature and extent of procedural rights in administrative proceedings are flexible, thereby allowing for proportional application. Under the common law, courts look to the nature of the right at stake and the nature of the process followed to determine which common law elements of procedural fairness will apply.¹⁴¹ The more important the decision is to the person affected and the more court-like the process, the greater procedural protections that will be required.¹⁴² Section 11 rights, on the other hand, apply in their entirety or do not apply at all. This does not accord with the flexible and proportional approach of administrative law.¹⁴³

117. In short, the Appellants' suggested "refinement" to the s.11 test does not address the purpose of s. 11 and would conveniently ignore the public safety purpose of the IRP Scheme. As recognized by this Court in *Wigglesworth* proceedings dealing with the removal of licences are not the kind of proceedings to which s. 11 applies. The Petitions Judge and the Court of Appeal were correct to hold that s.11 is not engaged in the circumstances.

3) Any Section 11(d) Infringement is Justified as a Reasonable Limit Under Section 1

118. If this Court finds that s. 11 is engaged and has been violated, any infringement is justified as a reasonable limit on that right under s. 1 of the *Charter*. The AGBC adopts and relies upon and her argument on s. 1 as set out in the AGBC Section 8 Factum but adds the

¹⁴⁰ *Canada (Attorney General) v. United States Steel Corp.*, 2011 FCA 176, [2011] F.C.J. No. 726, leave to appeal refused, [2011] S.C.C.A. No. 364 – Volume I, Tab 5 of the AGBC BOA s.11; See also *Martineau*, *supra* – Volume I, Tab 14 of the AGBC BOA s.11.

¹⁴¹ *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39, at para. 23 ["*Baker*"] – Volume I, Tab 1 of the AGBC BOA s.11; Further, it is open to the legislature to define the procedural rights that apply in any an administrative scheme. See: *Ocean Port Hotel Ltd v. British Columbia (General Manager, Liquor Control and Lincencing Branch)*, 2001 SCC 52, [2001] 2 S.C.R. 781 at para. 24 – Volume I, Tab 19 of the AGBC BOA s.11.

¹⁴² *Baker* at paras. 23-28 – Volume I, Tab 1 of the AGBC BOA s.11.

¹⁴³ Aylward at p. 9 – Volume II, Tab 58 of the AGBC BOA s.11; The need for flexibility in administrative processes has more recently been recognized by this Court in *Doré*. While administrative tribunals play a vital role in upholding the values of the *Charter*, they need not engage in a formal *Oakes* analysis, nor is such an analysis appropriate on judicial review. Rather, administrative law principles should be applied in determining whether the decision was reasonable: *Doré v. Québec (Tribunal des professions)*, 2012 SCC 12, [2012] 1 S.C.R. 395 – Volume I, Tab 9 of the AGBC BOA s.11.

following points.

119. In *R v. Whyte*, this Court held that a reverse onus clause relating to whether an accused was in care or control of a motor vehicle infringed s. 11(d) but was justified under s. 1.¹⁴⁴ Section 1 was relied upon in part because of the difficulties inherent in legislating with respect to drinking and driving and the fact that the federal government's previous legislative attempts had been unsuccessful. The same concerns are relevant here.

120. History demonstrates that anything less than the IRP Scheme would be less effective in reducing the growing number of injuries and deaths from alcohol-related crashes. Despite the existence of the ADP Scheme and the *Code* provisions concerning impaired driving, British Columbians continued to die as a result of drinking and driving. Gains made in combatting drinking and driving realized in the late 1990s were not observed after 2001.¹⁴⁵ Despite the combined efforts of the federal and provincial governments, drinking and driving continued to be a significant problem for British Columbia.¹⁴⁶ The IRP Scheme has been successful in lowering these numbers.¹⁴⁷ The Petitions Judge noted that even with the ADP Scheme, an immediate declaration of invalidity in regards to the IRP Scheme "may pose a danger to the public".¹⁴⁸

121. Furthermore, the IRP Scheme is designed to provide drivers with a quick review process. Not only did all of the Appellants have their hearing within nine days of applying for the review (three of the four had the review within a week),¹⁴⁹ all four of the Appellants had a decision on their review application within two weeks.¹⁵⁰

122. Given the measure of deference to the Legislature with respect to its choice of response to complex social issues, and the very swift review process provided for in the IRP Scheme, the

¹⁴⁴ *R v. Whyte*, [1988] 2 S.C.R. 3; [1988] S.C.J. No. 63 – Volume I, Tab 34 of the AGBC BOA s.11.

¹⁴⁵ Mann Affidavit, Vol. VII, p. 1285, at para. 5, see footnote 6.

¹⁴⁶ Martin Affidavit #1, Vol. III, p. 572, at para. 66.

¹⁴⁷ Martin Affidavit #2 at paras. 3-6, p. 1582, Exhibits "B", "C", and "D", pp. 1587-1595.

¹⁴⁸ British Columbia Supreme Court, Reasons for Judgment, December 23, 2011, Joint Record, Volume I, p. 109, at para. 21.

¹⁴⁹ Affidavit #1 of Erin Wikman (Chisholm), Joint Record, Vol. II, p. 343; Affidavit #1 of Erin Wikman (Beam), Joint Record, Vol. II, p. 385; Affidavit #1 of Richard James Goodwin, Joint Record, Vol. XI, p. 2044; Affidavit #1 of Stephen Martin (Roberts), Joint Record, Vol. V, p. 836.

¹⁵⁰ Affidavit #1 of Stephen Martin (Roberts), Joint Record, Vol. V, p. 843; Affidavit #1 of Erin Wikman (Chisholm), Joint Record, Vol. II, p. 361; Affidavit #1 of Erin Wikman (Beam), Joint Record, Vol. II, p. 400; Affidavit #1 of Richard James Goodwin, Joint Record, Vol. XI, p. 2082.

scheme is minimally impairing and falls within a range of reasonable alternatives available to the Province to combat drinking and driving. The continuing toll of death, serious injuries, and property damage due to crashes involving drinking drivers shows that criminal enforcement, even in conjunction with the ADP Scheme, cannot effectively meet the pressing and substantial objective of the IRP Scheme.

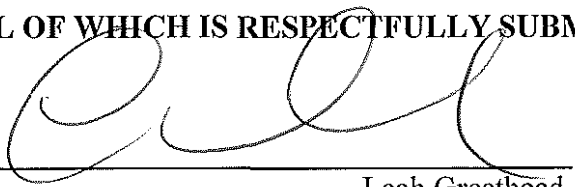
PART IV: SUBMISSIONS AS TO COSTS

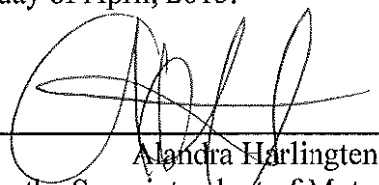
123. The Appellants seek costs in any event of the cause on the basis that they are public interest litigants. As with special costs sought by public interest litigants, any deviation from the usual costs rule, whether it is a request that no costs be awarded as against a litigant or that costs be awarded even if unsuccessful, should follow the approach articulated by this Court in *Carter v. Canada (Attorney General)*.¹⁵¹ Deviations from the normal costs rule should not occur as a matter of routine in constitutional litigation. Only when the matter at issue has not previously been resolved, transcends the individual interests of a litigant, and has significant societal impact should a court deviate from the normal rule of costs. Litigants must show that they have no personal, proprietary or pecuniary interest in the litigation that would justify the proceedings on economic grounds and establish with sufficient evidence that it would not have been possible to effectively pursue the litigation in question with private funding. Not only have the Appellants failed to address these issues, on the facts before this Court, the test cannot be met.

PART V: ORDERS SOUGHT

124. The AGBC asks that this appeal be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of April, 2015.


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 Columbia


 Alandra Harlinton,
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¹⁵¹ *Carter v. Canada (Attorney General)*, 2015 SCC 5, at paras. 133-142 – Volume I, Tab 8 of the AGBC BOA s.11.

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<i>Motor Vehicle Act</i> , R.S.B.C. 1996, c. 318, ss. 25.1, 215, 215.1, 215.2, 215.3, 215.4, 215.41, 215.43, 215.46 and 215.48	3, 4, 5, 8, 9, 10, 11, 16, 17, 19, 24, 25, 26, 28, 54, 55, 56, 57, 58, 62, 70, 84, 94, 103, 104, 110
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<i>Manitoba Highway Traffic Act</i> , C.C.S.M., c. H60, ss. 242.1(1.1)(7.1) and (7.1.1)-(7.2), 263.1, 263.2, 279, and 279.1-279.3	
<i>Motor Vehicles Act</i> , S.O. 1906, c. 46, s. 9 (6 Edw VII c. 46)	31
<i>New Brunswick Motor Vehicle Act</i> , R.S.N.B. 1973, c. M-17, ss. 301(2), 310.01, 310.04, 310.05, 310.11, 310.12, 310.13 and 311(1)	
<i>Newfoundland & Labrador Highway Traffic Act</i> , R.S.N.L. 1990, c. H-3, ss.	

	Paragraph Number(s)
60.01, 60.02, 60.03, 60.04, 60.2, 60.3, 65, 195(u.1) and (u.2)	
<i>Nova Scotia Motor Vehicle Act</i> , R.S.N.S. 1989, c. 293, ss. 66, 273, 279A, 279B, 279C, 279BA, 280 and 280A	
<i>NWT Motor Vehicle Act</i> , R.S.N.W.T 1988, C. M-16 (Nunavut), C. M-16, ss. 77.1, 78, 116.1, 116.4, 116.5, 116.6, 116.7, 116.8, and 300	
<i>Ontario Highway Traffic Act</i> , R.S.O. 1990, c. H.8, ss. 48, 48.3, 48.4, 50.1(1) and 57	
<i>Offence Act</i> , R.S.B.C. 1996, c. 338, s. 1	
<i>P.E.I. Highway Traffic Act</i> , R.S.P.E.I. 1988, c. H-5, ss. 71, 73, 255.1, 255.2, 277.1 277.2, 277.3 and 277.5	
<i>Quebec Highway Safety Code</i> , R.S.Q., c. C-24.2, ss. 64, 73, 76, 76.1.2 – 76.1.6, 202.0.1, 202.0.3, 202.4, 202.5, 202.6.2, 209.2.1, 209.2.1.1, and 209.2.1.2	
<i>Saskatchewan The Traffic Safety Act</i> , S.S. 2004, c. T-18.1, ss. 29, 146, 146.1, 148, 150.2, 152, 153	
<i>Yukon Motor Vehicles Act</i> , R.S.Y. 2002, c. 153, ss. 235, 238, 256(1), 257, 259, 262, and 263	
SECONDARY SOURCES	
Aylward and Ritacca, “In Defence of Administrative Law: Procedural Fairness for Administrative Monetary Penalties”, (2015) 28 Can. J. Admin. L. & Prac. 35	107, 114, 116
Solomon, Chamberlain, and Lynch, “Canada’s New Impaired Driving Legislation: Modest Gains and Missed Opportunities”, 56 Crim. L.Q. 51 2010	18

The Constitution Act, 1982

Citation: *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11

PART I CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Rights and freedoms in Canada

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

LEGAL RIGHTS

Marginal note: Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Marginal note: Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

Marginal note: Detention or imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Marginal note: Arrest or detention

10. Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed of that right; and

(c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Marginal note: Proceedings in criminal and penal matters

11. Any person charged with an offence has the right

(a) to be informed without unreasonable delay of the specific offence;

(b) to be tried within a reasonable time;

(c) not to be compelled to be a witness in proceedings against that person in respect of the offence;

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(e) not to be denied reasonable bail without just cause;

(f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

(g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

(i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Marginal note: Treatment or punishment

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Marginal note: Self-crimination

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

Marginal note: Interpreter

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

Criminal Code

R.S.C., 1985, c. C-46

Past version: in force between Oct 2, 2009 and Jan 7, 2010

Operation while impaired

253. (1) Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or of railway equipment or has the care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not,

(a) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or

(b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.

For greater certainty

(2) For greater certainty, the reference to impairment by alcohol or a drug in paragraph (1)(a) includes impairment by a combination of alcohol and a drug.

- R.S., 1985, c. C-46, s. 253;
- R.S., 1985, c. 27 (1st Supp.), s. 36, c. 32 (4th Supp.), s. 59;
- 2008, c. 6, s. 18.

Definitions

254. (1) In this section and sections 254.1 to 258.1,

- “analyst”
« *analyste* »

“analyst” means a person designated by the Attorney General as an analyst for the purposes of section 258;

- “approved container”
« *contenant approuvé* »

“approved container” means

(a) in respect of breath samples, a container of a kind that is designed to receive a sample of the breath of a person for analysis and is approved as suitable for the purposes of section 258 by order of the Attorney General of Canada, and

(b) in respect of blood samples, a container of a kind that is designed to receive a sample of the blood of a person for analysis and is approved as suitable for the purposes of section 258 by order of the Attorney General of Canada;

- “approved instrument”
« *alcootest approuvé* »

“approved instrument” means an instrument of a kind that is designed to receive and make an analysis of a sample of the breath of a person in order to measure the concentration of alcohol in the blood of that person and is approved as suitable for the purposes of section 258 by order of the Attorney General of Canada;

- “approved screening device”
« *appareil de détection approuvé* »

“approved screening device” means a device of a kind that is designed to ascertain the presence of alcohol in the blood of a person and that is approved for the purposes of this section by order of the Attorney General of Canada;

- “evaluating officer”
« *agent évaluateur* »

“evaluating officer” means a peace officer who is qualified under the regulations to conduct evaluations under subsection (3.1);

- “qualified medical practitioner”
« *médecin qualifié* »

“qualified medical practitioner” means a person duly qualified by provincial law to practise medicine;

- “qualified technician”
« *technicien qualifié* »

“qualified technician” means,

(a) in respect of breath samples, a person designated by the Attorney General as being qualified to operate an approved instrument, and

(b) in respect of blood samples, any person or person of a class of persons designated by the Attorney General as being qualified to take samples of blood for the purposes of this section and sections 256 and 258.

Testing for presence of alcohol or a drug

(2) 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.

Video recording

(2.1) For greater certainty, a peace officer may make a video recording of a performance of the physical coordination tests referred to in paragraph (2)(a).

Samples of breath or blood

(3) If a peace officer has reasonable grounds to believe that a person is committing, or at any time within the preceding three hours has committed, an offence under section 253 as a result of the consumption of alcohol, the peace officer may, by demand made as soon as practicable, require the person

(a) to provide, as soon as practicable,

(i) samples of breath that, in a qualified technician's opinion, will enable a proper analysis to be made to determine the concentration, if any, of alcohol in the person's blood, or

(ii) if the peace officer has reasonable grounds to believe that, because of their physical condition, the person may be incapable of providing a sample of breath or it would be impracticable to obtain a sample of breath, samples of blood that, in the opinion of the qualified medical practitioner or qualified technician taking the samples, will enable a proper analysis to be made to determine the concentration, if any, of alcohol in the person's blood; and

(b) if necessary, to accompany the peace officer for that purpose.

Evaluation

(3.1) If a peace officer has reasonable grounds to believe that a person is committing, or at any time within the preceding three hours has committed, an offence under paragraph 253(1)(a) as a result of the consumption of a drug or of a combination of alcohol and a drug, the peace officer may, by demand made as soon as practicable, require the person to submit, as soon as practicable, to an evaluation conducted by an evaluating officer to determine whether the person's ability to operate a motor vehicle, a vessel, an aircraft or railway equipment is impaired by a drug or by a combination of alcohol and a drug, and to accompany the peace officer for that purpose.

Video recording

(3.2) For greater certainty, a peace officer may make a video recording of an evaluation referred to in subsection (3.1).

Testing for presence of alcohol

(3.3) If the evaluating officer has reasonable grounds to suspect that the person has alcohol in their body and if a demand was not made under paragraph (2)(b) or subsection (3), the evaluating officer may, by demand made as soon as practicable, require the person to provide, as soon as practicable, a sample of breath that, in the evaluating officer's opinion, will enable a proper analysis to be made by means of an approved instrument.

Samples of bodily substances

(3.4) If, on completion of the evaluation, the evaluating officer has reasonable grounds to believe, based on the evaluation, that the person's ability to operate a motor vehicle, a vessel, an aircraft or railway equipment is impaired by a drug or by a combination of alcohol and a drug, the evaluating officer may, by demand made as soon as practicable, require the person to provide, as soon as practicable,

- (a) a sample of either oral fluid or urine that, in the evaluating officer's opinion, will enable a proper analysis to be made to determine whether the person has a drug in their body; or
- (b) samples of blood that, in the opinion of the qualified medical practitioner or qualified technician taking the samples, will enable a proper analysis to be made to determine whether the person has a drug in their body.

Condition

(4) Samples of blood may be taken from a person under subsection (3) or (3.4) only by or under the direction of a qualified medical practitioner who is satisfied that taking the samples would not endanger the person's life or health.

Failure or refusal to comply with demand

(5) Everyone commits an offence who, without reasonable excuse, fails or refuses to comply with a demand made under this section.

Only one determination of guilt

(6) A person who is convicted of an offence under subsection (5) for a failure or refusal to comply with a demand may not be convicted of another offence under that subsection in respect of the same transaction.

- R.S., 1985, c. C-46, s. 254;

- R.S., 1985, c. 27 (1st Supp.), s. 36, c. 1 (4th Supp.), ss. 14, 18(F), c. 32 (4th Supp.), s. 60;
- 1999, c. 32, s. 2(Preamble);
- 2008, c. 6, s. 19.

Criminal Code

R.S.C., 1985, c. C-46

Current version: in force since Mar 31, 2015

Operation while impaired

- **253.** (1) Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or of railway equipment or has the care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not,
 - (a) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or
 - (b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.
- **For greater certainty**

(2) For greater certainty, the reference to impairment by alcohol or a drug in paragraph (1)(a) includes impairment by a combination of alcohol and a drug.

- R.S., 1985, c. C-46, s. 253;
- R.S., 1985, c. 27 (1st Supp.), s. 36, c. 32 (4th Supp.), s. 59;
- 2008, c. 6, s. 18.

Definitions

- **254.** (1) In this section and sections 254.1 to 258.1,

“analyst”

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“analyst” means a person designated by the Attorney General as an analyst for the purposes of section 258;

“approved container”

« *contenant approuvé* »

“approved container” means

(a) in respect of breath samples, a container of a kind that is designed to receive a sample of the breath of a person for analysis and is approved as suitable for the purposes of section 258 by order of the Attorney General of Canada, and

(b) in respect of blood samples, a container of a kind that is designed to receive a sample of the blood of a person for analysis and is approved as suitable for the purposes of section 258 by order of the Attorney General of Canada;

“approved instrument”

« *alcootest approuvé* »

“approved instrument” means an instrument of a kind that is designed to receive and make an analysis of a sample of the breath of a person in order to measure the concentration of alcohol in the blood of that person and is approved as suitable for the purposes of section 258 by order of the Attorney General of Canada;

“approved screening device”

« *appareil de détection approuvé* »

“approved screening device” means a device of a kind that is designed to ascertain the presence of alcohol in the blood of a person and that is approved for the purposes of this section by order of the Attorney General of Canada;

“evaluating officer”

« *agent évaluateur* »

“evaluating officer” means a peace officer who is qualified under the regulations to conduct evaluations under subsection (3.1);

“qualified medical practitioner”

« *médecin qualifié* »

“qualified medical practitioner” means a person duly qualified by provincial law to practise medicine;

“qualified technician”

« *technicien qualifié* »

“qualified technician” means,

(a) in respect of breath samples, a person designated by the Attorney General as being qualified to operate an approved instrument, and

(b) in respect of blood samples, any person or person of a class of persons designated by the Attorney General as being qualified to take samples of blood for the purposes of this section and sections 256 and 258.

• **Testing for presence of alcohol or a drug**

(2) 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.

- **Video recording**

(2.1) For greater certainty, a peace officer may make a video recording of a performance of the physical coordination tests referred to in paragraph (2)(a).

- **Samples of breath or blood**

(3) If a peace officer has reasonable grounds to believe that a person is committing, or at any time within the preceding three hours has committed, an offence under section 253 as a result of the consumption of alcohol, the peace officer may, by demand made as soon as practicable, require the person

(a) to provide, as soon as practicable,

- (i) samples of breath that, in a qualified technician's opinion, will enable a proper analysis to be made to determine the concentration, if any, of alcohol in the person's blood, or
 - (ii) if the peace officer has reasonable grounds to believe that, because of their physical condition, the person may be incapable of providing a sample of breath or it would be impracticable to obtain a sample of breath, samples of blood that, in the opinion of the qualified medical practitioner or qualified technician taking the samples, will enable a proper analysis to be made to determine the concentration, if any, of alcohol in the person's blood; and
- (b) if necessary, to accompany the peace officer for that purpose.

- **Evaluation**

(3.1) If a peace officer has reasonable grounds to believe that a person is committing, or at any time within the preceding three hours has committed, an offence under paragraph 253(1)(a) as a result of the consumption of a drug or of a combination of alcohol and a drug, the peace officer may, by demand made as soon as practicable, require the person to submit, as soon as practicable, to an evaluation conducted by an evaluating officer to determine whether the person's ability to operate a motor vehicle, a vessel, an aircraft or railway equipment is impaired by a drug or by a combination of alcohol and a drug, and to accompany the peace officer for that purpose.

- **Video recording**

(3.2) For greater certainty, a peace officer may make a video recording of an evaluation referred to in subsection (3.1).

- **Testing for presence of alcohol**

(3.3) If the evaluating officer has reasonable grounds to suspect that the person has alcohol in their body and if a demand was not made under paragraph (2)(b) or subsection (3), the evaluating officer may, by demand made as soon as practicable, require the person to provide, as soon as practicable, a sample of breath that, in the evaluating officer's opinion, will enable a proper analysis to be made by means of an approved instrument.

- **Samples of bodily substances**

(3.4) If, on completion of the evaluation, the evaluating officer has reasonable grounds to believe, based on the evaluation, that the person's ability to operate a motor vehicle, a vessel, an aircraft or railway equipment is impaired by a drug or by a combination of alcohol and a drug, the evaluating officer may, by demand made as soon as practicable, require the person to provide, as soon as practicable,

(a) a sample of either oral fluid or urine that, in the evaluating officer's opinion, will enable a proper analysis to be made to determine whether the person has a drug in their body; or

(b) samples of blood that, in the opinion of the qualified medical practitioner or qualified technician taking the samples, will enable a proper analysis to be made to determine whether the person has a drug in their body.

- **Condition**

(4) Samples of blood may be taken from a person under subsection (3) or (3.4) only by or under the direction of a qualified medical practitioner who is satisfied that taking the samples would not endanger the person's life or health.

- **Failure or refusal to comply with demand**

(5) Everyone commits an offence who, without reasonable excuse, fails or refuses to comply with a demand made under this section.

- **Only one determination of guilt**

(6) A person who is convicted of an offence under subsection (5) for a failure or refusal to comply with a demand may not be convicted of another offence under that subsection in respect of the same transaction.

- R.S., 1985, c. C-46, s. 254;
- R.S., 1985, c. 27 (1st Supp.), s. 36, c. 1 (4th Supp.), ss. 14, 18(F), c. 32 (4th Supp.), s. 60;
- 1999, c. 32, s. 2(Preamble);
- 2008, c. 6, s. 19.

R.S.B.C. 1996, c. 318, s. 1

MOTOR VEHICLE ACT

RSBC 1996, CHAPTER 318

Past version: in force between Oct 4, 2010 and Jun 1, 2011

Remedial courses and programs for drivers

25.1 (1) This section applies if a person has a driving record that in the opinion of the superintendent is unsatisfactory or the superintendent considers that, with respect to the person's driving skills, fitness or ability to drive and operate a motor vehicle, it is in the public interest for the person to attend or participate in one or more of the following:

- (a) a driver training course specified by the superintendent;
- (b) a remedial program or a component of it specified by the superintendent;
- (c) an ignition interlock program specified by the superintendent.

(2) The superintendent may require a statement in, endorsement on or attachment to the person's driver's licence, adding as a condition of the driver's licence that the person must, in order to continue to hold the licence, attend or participate in and complete, to the satisfaction of the superintendent, a course or program referred to in subsection (1) if it is not, in the superintendent's opinion, contrary to the public interest to allow the person to hold a driver's licence while attending or participating in the course or program.

(3) The superintendent may

- (a) as part of a condition of a driver's licence under subsection (2), specify a date by which or a period of time during which the person must complete the program, and
- (b) at any time extend, change or cancel a date or period of time specified under paragraph (a).

(4) Section 25 (13) applies to a condition imposed in respect of a person's driver's licence under this section.

(5) If it is, in the superintendent's opinion, contrary to the public interest to allow the person to hold a driver's licence while attending or participating in a course or program referred to in subsection (1), the superintendent may require that the person attend and complete, to the satisfaction of the superintendent, a course or program referred to in subsection (1) (a) or (b) before being eligible to apply for a driver's licence under section 25.

(6) A person who is required to attend or participate in and complete a program referred to in subsection (1) must pay the prescribed fees.

(7) Nothing in this section limits the application of sections 25 (12), 29, 92 and 93.

Prohibition against driving relating to fitness or ability to drive

92 If

(a) a person has been required under section 29 to submit to an examination and he or she

(i) fails to appear and submit to the examination, or

(ii) fails to pay the prescribed examination fee,

(b) the superintendent considers that a person is unable or unfit to drive a motor vehicle or to hold a driver's licence of a certain class,

(b.1) a person fails to comply with a condition imposed on his or her driver's licence under section 25.1 (2), or

(b.2) a person fails to attend or participate in and complete a program referred to in section 233 to the satisfaction of the superintendent as required by the superintendent,

then, with or without a hearing and even though the person is or may be subject to another prohibition from driving, the superintendent may

(c) prohibit the person from driving a motor vehicle, or

(d) direct the Insurance Corporation of British Columbia to

(i) cancel the person's driver's licence and to issue a different class of driver's licence to the person, or

- (ii) cancel the person's driver's licence without issuing a different class of driver's licence to the person.

Prohibition against driving by superintendent

93 (1) Even though a person is or may be subject to another prohibition from driving, if the superintendent considers it to be in the public interest, the superintendent may, with or without a hearing, prohibit the person from driving a motor vehicle

(a) if the person

(i) has failed to comply with this Act or the regulations, or

(ii) has a driving record that in the opinion of the superintendent is unsatisfactory,

(b) if the person's privilege of driving a motor vehicle has been suspended or cancelled in any jurisdiction in Canada or in the United States of America, or

(c) for any cause not referred to in paragraph (a) or (b) that relates to the use or operation of motor vehicles.

(2) In forming an opinion as to whether a person's driving record is unsatisfactory the superintendent may consider all or any part of the person's driving record, including but not limited to any part of the driving record previously taken into account by a court or by the superintendent in making any order prohibiting the person from driving a motor vehicle.

(3) If under this section the superintendent prohibits a person from driving a motor vehicle on the grounds of an unsatisfactory driving record, a prohibition so made must not be held invalid on the grounds that the superintendent did not examine or consider other information or evidence.

Notice of driving prohibition

94.1 (1) If a peace officer has reasonable and probable grounds to believe

(a) by reason of an analysis of the breath or blood of a person, that a person operated a motor vehicle or had care or control of a motor vehicle having consumed alcohol in such a quantity that the

concentration of alcohol in the person's blood exceeded 80 milligrams of alcohol in 100 millilitres of blood at any time within 3 hours after operating or having care or control of the motor vehicle, or

(b) that a person failed or refused, without a reasonable excuse, to comply with a demand made on the person to supply a sample of his or her breath or blood under section 254 of the *Criminal Code* in respect of the operation or care or control of a motor vehicle,

the peace officer, or another peace officer, must,

(c) if the person holds a valid licence or permit issued under this Act to operate a motor vehicle,

(i) take possession of the person's licence or permit if the person has it in his or her possession, and

(ii) serve on the person a notice of driving prohibition, or

(d) if the person

(i) holds a valid document issued in another jurisdiction that allows the person to operate a motor vehicle, or

(ii) does not hold a valid licence or permit to operate a motor vehicle,

serve on the person a notice of driving prohibition.

(2) If a person referred to in subsection (1) (c) is not in possession of his or her licence or permit issued under this Act to operate a motor vehicle at the time the person is served with the notice of driving prohibition, the person must promptly send the licence or permit to the Insurance Corporation of British Columbia.

(3) The notice of driving prohibition must be in the prescribed form and must contain

(a) a statement of the right to have the driving prohibition reviewed by the superintendent under section 94.4,

(b) instructions describing how to apply for that review, and

(c) a statement that if the person on whom the notice of driving prohibition is served does not apply for a review under section 94.4,

the person will be prohibited from operating a motor vehicle for a period of 90 days.

(4) A notice of driving prohibition must not be served on a person under this section if a notice of driving prohibition is served on the person under section 215.41.

Effect of notice of driving prohibition

94.2 (1) If a person is served with a notice of driving prohibition under

(a) section 94.1 (1) (c),

(i) subject to subsection (2), the notice acts as a temporary driver's licence that expires 21 days from the date it is served, and

(ii) despite the fact the person is or may be subject to another prohibition from driving, the person is prohibited from operating a motor vehicle for 90 days effective on the expiration of the temporary driver's licence referred to in subparagraph (i), or

(b) section 94.1 (1) (d), despite the fact the person is or may be subject to another prohibition from driving, the person is prohibited from operating a motor vehicle for 90 days effective 21 days from the date the notice is served.

(2) If a person is subject to a driving prohibition under section 215 at the time the person is served with a notice of driving prohibition under section 94.1, the temporary driver's licence referred to in subsection (1) (a) (i) is valid only on expiry of the driving prohibition under section 215.

(3) The temporary driver's licence referred to in subsection (1) (a) (i)

(a) is of the same class, and

(b) is subject to all of the same restrictions and conditions

as the licence or permit taken by the peace officer or sent to the Insurance Corporation of British Columbia under section 94.1.

Duties of peace officer

94.3 A peace officer who serves a notice of driving prohibition on a person under section 94.1 must promptly forward to the superintendent

- (a) the person's licence or permit to operate a motor vehicle, if the peace officer took the licence or permit into possession,
- (b) a copy of the notice of driving prohibition,
- (c) a certificate of service, in the form established by the superintendent, showing that the notice of driving prohibition was personally served on the person subject to the driving prohibition,
- (d) a report, in the form established by the superintendent, sworn or solemnly affirmed by the peace officer, and
- (e) a copy of any certificate of analysis under section 258 of the *Criminal Code* with respect to the person.

Review of driving prohibition

94.4 (1) A person may, within 7 days of being served with a notice of driving prohibition under section 94.1, apply to the superintendent for a review of the driving prohibition by

- (a) filing an application for review with the superintendent,
 - (b) paying to the superintendent the prescribed hearing fee, and
 - (c) if it has not been taken by the peace officer or sent to the superintendent under section 94.1, surrendering to the Insurance Corporation of British Columbia his or her licence or permit to operate a motor vehicle unless the person completes and files with the superintendent a statutory declaration stating that the licence or permit has been lost, stolen or destroyed.
- (2) An application for review must be in the form, contain the information and be completed in the manner required by the superintendent.
- (3) An applicant may attach to the application for review any sworn statements or other evidence that the applicant wishes the superintendent to consider.
- (4) The filing of an application for review does not stay the driving prohibition.
- (5) The superintendent is not required to hold an oral hearing unless the applicant

(a) requests an oral hearing at the time of filing the application for review, and

(b) pays the prescribed oral hearing fees.

(6) If a person requests an oral hearing and fails to appear on the date and at the time and place arranged for the hearing, without prior notice to the superintendent, the right to an oral hearing is deemed to have been waived by the person.

Considerations

94.5 (1) In a review of a driving prohibition under section 94.4, the superintendent must consider

(a) any relevant sworn or solemnly affirmed statements and any other relevant information,

(b) the report of the peace officer forwarded under section 94.3 (d),

(c) a copy of any certificate of analysis under section 258 of the *Criminal Code* with respect to the person served with the notice of driving prohibition,

(c.1) any other relevant documents and information forwarded to the superintendent, including peace officers' reports that have not been sworn or solemnly affirmed and the copy of the notice of prohibition, and

(d) if an oral hearing is held, in addition to the matters referred to in paragraphs (a) to (c), any relevant evidence given or representations made at the hearing.

(2) The superintendent may consider a copy of the certificate referred to in subsection (1) (c) without proof

(a) of the identity and official character of the person appearing to have signed the certificate, or

(b) that the copy is a true copy.

(2.1) Despite subsection (1), the superintendent may, in the superintendent's discretion, proceed with a hearing whether or not the superintendent has received at the time of the hearing all those documents required to be forwarded to the superintendent under section 94.3.

(2.2) The superintendent may determine the weight to be given to any document or other information referred to in subsection (1) (c.1), including any document or information that is not sworn or solemnly affirmed.

(3) In a review of a driving prohibition under section 94.4, no person may be cross examined.

Decision of the superintendent

94.6 (1) If after considering an application for review under section 94.4, the superintendent is satisfied that

(a) the person operated or had care or control of a motor vehicle having consumed alcohol in such a quantity that the concentration of alcohol in the person's blood exceeded 80 milligrams of alcohol in 100 millilitres of blood at any time within 3 hours after operating or having care or control of the motor vehicle, or

(b) the person failed or refused, without a reasonable excuse, to comply with a demand made on the person to supply a sample of his or her breath or blood under section 254 of the *Criminal Code* in respect of the operation or care or control of a motor vehicle

the superintendent must confirm the driving prohibition.

(2) If after considering an application for review under section 94.4, the superintendent is satisfied that

(a) the person did not, because of alcohol consumed prior to or while operating or having care or control of a motor vehicle, have a concentration of alcohol in his or her blood that exceeded 80 milligrams of alcohol in 100 millilitres of blood at any time within 3 hours after operating or having care or control of the motor vehicle, or

(b) the person

(i) did not fail or refuse to comply with a demand made on the person to supply a sample of his or her breath or blood under section 254 of the *Criminal Code* in respect of the operation or care or control of a motor vehicle, or

(ii) had a reasonable excuse for failing or refusing to comply with the demand referred to in subparagraph (i),

the superintendent must

(c) revoke the driving prohibition,

(d) direct the Insurance Corporation of British Columbia to return any licence or permit to operate a motor vehicle taken into possession by the peace officer or sent to the corporation, and

(e) direct that the application and hearing fees paid be refunded to the applicant.

(3) Subject to subsection (4), the decision of the superintendent, and the reasons for the decision, must be in writing and a copy must be sent to the applicant within 21 days of the date the notice of driving prohibition was served on the applicant under section 94.1.

(4) If the superintendent is unable to send the decision to the applicant within the 21 day period set out in subsection (3), the superintendent may extend that period for a period determined by the superintendent.

(5) If the superintendent extends the period for sending a decision to the applicant under subsection (4), the superintendent must

(a) stay the driving prohibition imposed on the applicant under section 94.2 for the period of the extension determined under subsection (4), and

(b) if the applicant held a valid licence or permit issued under this Act to operate a motor vehicle at the time the applicant was served with the notice of driving prohibition under section 94.1, direct the Insurance Corporation of British Columbia to issue to the applicant a temporary driver's licence that

(i) is valid on the expiration of the temporary driver's licence referred to in section 94.2 (1) (a) (i), and

(ii) expires with the period of extension determined under subsection (4).

(6) The temporary driver's licence issued under subsection (5) (b)

(a) is of the same class, and

(b) is subject to all of the same restrictions and conditions

as the licence or permit taken by the peace officer or sent to the Insurance Corporation of British Columbia under section 94.1.

(7) The superintendent must promptly give the applicant notice of an extension made under subsection (4).

(8) The copy referred to in subsection (3) and the notice referred to in subsection (7) must be sent to the applicant

(a) at the last known address of the applicant as shown in the records maintained by the Insurance Corporation of British Columbia, or

(b) at the address shown in the application for review, if that address is different from the address in the Insurance Corporation of British Columbia's records.

(9) A notice of extension given under subsection (7) is deemed to be a notice of prohibition for the purposes of section 95 (4) (a) or (b).

Amount payable to reinstate driver's licence

97.2 If, under this Act, the *Criminal Code*, the *Youth Justice Act* (Canada) or the *Youth Criminal Justice Act* (Canada),

(a) a person is or was prohibited from driving a motor vehicle,

(b) a person's driver's licence is or was suspended, or

(c) a person's right to apply for or obtain a driver's licence is or was suspended,

except in the case of a licence suspension under section 90.3 or a prohibition under section 215, the amount payable to reinstate a driver's licence following the prohibition or suspension, in addition to any other fee prescribed, is \$250.

Court prohibition against driving

98 (1) For the purpose of this section, "**convicts**" includes the granting of an absolute or conditional discharge and the determination under section 123 (2) of the *Motor Vehicle Act*, R.S.B.C. 1979, c. 288, that a contravention took place.

(2) If a court convicts a person of

(a) an offence under this Act, or

(b) [Repealed 2007-14-156.]

(c) a motor vehicle related *Criminal Code* offence,

the court may

(d) consider the person's driving record, and

(e) even though the person is or may be subject to another prohibition from driving, prohibit the person from driving a motor vehicle for a definite period of time if the court considers that the facts of the case or the person's driving record or both the facts of the case and his or her driving record when taken together justify the prohibition.

(3) Subsection (2) does not apply if the defendant is convicted of an offence under section 83 or 83.1.

(4) If a court prohibits a person from driving a motor vehicle under this section, the court must order that the prohibition

(a) take effect immediately,

(b) continue for the full day of each day of the prohibition, and

(c) continue for consecutive days.

(5) A person, who is prohibited from driving a motor vehicle under this section for a period of more than 3 years, may make an application to the court that prohibited him or her from driving for a review of the length of the prohibition, after 3 years of the prohibition have elapsed and after notifying the Insurance Corporation of British Columbia.

(6) On an application under subsection (5), the court may, if it considers that it is not contrary to public interest, reduce the length of the prohibition or cancel the prohibition.

(7) If the court reduces the length of a prohibition or cancels a prohibition under subsection (6), it must forthwith notify the Insurance Corporation of British Columbia of its decision.

Automatic prohibition against driving on conviction

99 (1) For the purpose of this section, "**convicted**" includes the granting of an absolute or conditional discharge.

(2) A person who is convicted of

(a) an offence under section 95, 102, 224 or 226 (1), or

(b) a motor vehicle related *Criminal Code* offence

is automatically and without notice prohibited from driving a motor vehicle for 12 months from the date of sentencing, the date that the passing of sentence is suspended, the date of being granted an absolute or conditional discharge or the date a court imposes a sentence under the *Youth Criminal Justice Act* (Canada) or the *Youth Justice Act*.

Automatic roadside driving prohibition

215.41 (1) In this section, "**driver**" includes a person having the care or control of a motor vehicle on a highway or industrial road whether or not the motor vehicle is in motion.

(2) In this section and in sections 215.42, 215.43 and 215.5,

"**approved screening device**" means a device prescribed by the Lieutenant Governor in Council for the purposes of this section;

"**fail**" means an indication on an approved screening device that the concentration of alcohol in a person's blood is not less than 80 milligrams of alcohol in 100 millilitres of blood;

"**warn**" means an indication on an approved screening device that the concentration of alcohol in a person's blood is not less than 50 milligrams of alcohol in 100 millilitres of blood.

(3) If, at any time or place on a highway or industrial road,

(a) a peace officer makes a demand to a driver under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device and the approved screening device registers a warn or a fail, and

(b) the peace officer has reasonable grounds to believe, as a result of the analysis, that the driver's ability to drive is affected by alcohol,

the peace officer, or another peace officer, must,

(c) if the driver holds a valid licence or permit issued under this Act, or a document issued in another jurisdiction that allows the driver to operate a motor vehicle, take possession of the driver's licence, permit or document if the driver has it in his or her possession, and

(d) serve on the driver a notice of driving prohibition.

(4) If a peace officer has reasonable grounds to believe that a driver failed or refused, without reasonable excuse, to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device, the peace officer, or another peace officer, must take those actions described in subsection (3) (c) and (d).

(5) If the driver is not in possession of his or her licence or permit issued under this Act to operate a motor vehicle at the time the driver is served with the notice of driving prohibition, the driver must promptly send the licence or permit to the Insurance Corporation of British Columbia.

(6) The notice of driving prohibition must be in the prescribed form and must contain the following:

(a) a statement that the driver is immediately prohibited from driving, for the period set out in the notice of prohibition;

(b) a statement setting out

(i) the amount of any monetary penalty imposed on the driver under section 215.44, and

(ii) the requirement that the monetary penalty be paid no later than 30 days after the date the notice is served;

(c) a statement of the right to have the driving prohibition reviewed by the superintendent under section 215.48;

(d) instructions describing how to apply for that review.

(7) A notice of driving prohibition must not be served on a person under this section if a notice of driving prohibition is served on the person under section 94.1.

Opportunity for second analysis

215.42 (1) If an analysis of the breath of a person by means of an approved screening device under section 215.41 (3) registers a warn or a fail, a second analysis must be performed if, after a peace officer serves on the person a notice of driving prohibition under section 215.41 (3) (d), the person forthwith requests the second analysis.

(2) A second analysis performed under this section must be performed with a different approved screening device than was used in the analysis under section 215.41 (3).

(3) If a person provides a sample of breath for a second analysis under this section forthwith on being requested to so by the peace officer, the result of the second analysis governs, and any prohibition resulting from the analysis under section 215.41 (3) continues or terminates or is varied accordingly.

Effect of driving prohibition under section 215.41

215.43 (1) Subject to section 215.42 (3), if a person is served with a notice of driving prohibition under section 215.41 in circumstances where an approved screening device registers a warn, the person is prohibited from driving for

- (a) 3 days, in the case of a first prohibition,
- (b) 7 days, in the case of a second prohibition, or
- (c) 30 days, in the case of a subsequent prohibition.

(2) Subject to section 215.42 (3), if a person is served with a notice of driving prohibition under section 215.41 in circumstances where

- (a) an approved screening device registers a fail, or
- (b) the person refuses or fails to comply with a demand as described in section 215.41 (4),

the person is prohibited from driving for a period of 90 days.

(3) A period of prohibition under this section takes effect immediately on service of the notice of driving prohibition under section 215.41.

(4) For the purposes of subsection (1), a prohibition is

(a) a first prohibition if a person has not been subject to a previous prohibition under that subsection within the 5 year period preceding the prohibition,

(b) a second prohibition if a person has been subject to one previous prohibition under that subsection within the 5 year period preceding the prohibition, and

(c) a subsequent prohibition if the person has been subject to 2 or more previous prohibitions under that subsection within the 5 year period preceding the prohibition.

(5) For the purposes of determining whether a prohibition is a second or subsequent prohibition, the prohibition must not be considered to be a previous prohibition unless

(a) the period for requesting a review of the prohibition under section 215.48 has expired, or

(b) if the person requests a review of the prohibition, the period referred to under section 215.5 (6) or (7), as applicable, has expired.

Additional consequences – monetary penalty

215.44 (1) A person who has been served with a notice of driving prohibition under section 215.41 is also liable to pay, no later than 30 days after the date the notice is served, a monetary penalty in the amount prescribed by regulation.

(2) The monetary penalty must not exceed the amount prescribed by regulation, and in any event must not exceed \$500.

Additional consequences – remedial program

215.45 If a person is prohibited from driving for a period of 30 or 90 days under section 215.43, the person must register in and attend any remedial program required by the superintendent under section 25.1.

Additional consequences – impoundment of vehicle

215.46 (1) If a peace officer serves a person with a notice of a 3-day or 7-day driving prohibition under section 215.41 (3) and believes that impoundment of the motor vehicle that the person was driving or operating at the time the notice was served is necessary to prevent the person from driving or operating the motor vehicle before the prohibition expires, the peace officer may cause the motor vehicle to be taken to and impounded at a place directed by the peace officer.

(2) If a peace officer serves a person with a notice of a 30-day or 90-day driving prohibition under section 215.41 (3), the peace officer must cause the motor vehicle that the person was driving or operating at the time the notice was served to be taken to and impounded at a place directed by the peace officer.

Duties of peace officer related to driving prohibition under section 215.41

215.47 A peace officer who serves a notice of driving prohibition on a person under section 215.41 must promptly forward to the superintendent

- (a) the person's licence or permit or any document issued in another jurisdiction that allows the person to operate a motor vehicle, if the peace officer took the licence, permit or document into possession,
- (b) a copy of the notice of driving prohibition,
- (c) a certificate of service, in the form established by the superintendent, showing that the notice of driving prohibition was personally served on the person subject to the driving prohibition, and
- (d) a report, in the form established by the superintendent.

Review of driving prohibition under section 215.41

215.48 (1) A person may, within 7 days of being served with a notice of driving prohibition under section 215.41, apply to the superintendent for a review of the driving prohibition by

- (a) filing an application for review with the superintendent,
- (b) paying to the superintendent the prescribed hearing fee, and
- (c) if it has not been taken by the peace officer or sent to the superintendent under section 215.41, surrendering to the Insurance Corporation of British Columbia his or her licence or permit to

operate a motor vehicle unless the person completes and files with the superintendent a statutory declaration stating that the licence or permit has been lost, stolen or destroyed.

- (2) An application for review must be in the form, contain the information and be completed in the manner required by the superintendent.
- (3) An applicant may attach to the application for review any statements or other evidence that the applicant wishes the superintendent to consider.
- (4) The filing of an application for review does not stay the driving prohibition.
- (5) The superintendent is not required to hold an oral hearing unless
 - (a) the driving prohibition is for 30 or 90 days, and
 - (b) the applicant
 - (i) requests an oral hearing at the time of filing the application for review, and
 - (ii) pays the prescribed oral hearing fees.
- (6) If a person requests an oral hearing and fails to appear on the date and at the time and place arranged for the hearing, without prior notice to the superintendent, the right to an oral hearing is deemed to have been waived by the person.

Considerations on review under section 215.48

215.49 (1) In a review of a driving prohibition under section 215.48, the superintendent must consider

- (a) any relevant written statements or evidence submitted by the applicant,
- (b) the report of the peace officer forwarded under section 215.47 (d),
- (c) a copy of the notice of driving prohibition,
- (d) any other relevant documents and information forwarded to the superintendent by the peace officer who served the notice of driving prohibition or any other peace officer,
- (e) in the case of an oral hearing, any relevant evidence given or representations made at the hearing, and

(f) in the case of a second or subsequent prohibition, as described in section 215.43 (4) and (5), the person's driving record.

(2) In a review under section 215.48, no person may be cross examined.

(3) Despite subsection (1), the superintendent may, in the superintendent's discretion, proceed with a hearing whether or not the superintendent has received, at the time of the hearing, all those documents required to be forwarded to the superintendent under section 215.47.

Decision of superintendent after review under section 215.48

215.5 (1) If, after considering an application for review under section 215.48, the superintendent is satisfied that the person was a driver within the meaning of section 215.41 (1) and,

- (a) in respect of a 3-day, 7-day or 30-day driving prohibition,
 - (i) an approved screening device registered a warn, and
 - (ii) in the case of
 - (A) a 7-day driving prohibition, the driving prohibition was a second prohibition, or
 - (B) a 30-day driving prohibition, the driving prohibition was a subsequent prohibition, or
- (b) in respect of a 90-day driving prohibition,
 - (i) an approved screening device registered a fail, or
 - (ii) the person failed or refused, without reasonable excuse, to comply with a demand made on the person as described in section 215.41 (4),

the superintendent must confirm the driving prohibition, the monetary penalty for which the person is liable under section 215.44 and the impoundment imposed under section 215.46 for the period specified in section 253.

(2) If, after considering an application for review under section 215.48 in respect of a 7-day or 30-day prohibition, the superintendent is satisfied that the person was a driver within the meaning of section 215.41 (1) and an approved screening device registered a warn, and determines that

- (a) in the case of a 7-day driving prohibition, the prohibition was a first prohibition, or

(b) in the case of a 30-day driving prohibition, the prohibition was either

- (i) a first prohibition, or
- (ii) a second prohibition,

the superintendent must

(c) substitute

- (i) a 3-day driving prohibition, in the circumstances described in paragraph (a) or (b) (i), or
- (ii) a 7-day driving prohibition, in the circumstances described in paragraph (b) (ii), and

(d) vary accordingly the monetary penalty for which the person is liable under section 215.44 and, in respect of any impoundment, section 253 (8) applies.

(3) If, after considering an application for review under section 215.48 in respect of a 90-day prohibition, the superintendent is satisfied that the person was a driver within the meaning of section 215.41 (1) and an approved screening device registered a warn rather than a fail, the superintendent must

- (a) substitute a 3-day, 7-day or 30-day prohibition, as applicable, and
- (b) vary accordingly the monetary penalty for which the person is liable under section 215.44 and, in respect of the impoundment, section 253 (8) applies.

(4) If, after considering an application for review under section 215.48, the superintendent is satisfied that

- (a) the person was not a driver within the meaning of section 215.41 (1),
- (b) in the case of a 3-day, 7-day or 30-day driving prohibition, an approved screening device did not register a warn, or
- (c) in the case of a 90-day driving prohibition,
 - (i) an approved screening device did not register a fail or a warn, or

(ii) the person did not fail or refuse to comply with a demand made on the person as described in section 215.41 (4), or had a reasonable excuse for failing to comply with the demand,

the superintendent must

- (d) revoke the driving prohibition,
- (e) cancel the monetary penalty for which the person would otherwise be liable under section 215.44 and, in respect of any impoundment, section 253 (8) applies, and
- (f) if the person held a valid licence or permit issued under this Act to operate a motor vehicle at the time the notice of driving prohibition was served under section 215.41, direct the Insurance Corporation of British Columbia to return any licence or permit to operate a motor vehicle taken into possession by the peace officer or sent to the corporation.

(5) Despite subsection (4) (b), the superintendent must not take any action described in subsection (4) (d), (e) or (f) in respect of a 3-day, 7-day or 30-day driving prohibition if the superintendent is satisfied that, in the circumstances under review, an approved screening device registered a fail instead of a warn.

(6) Subject to subsection (7), the decision of the superintendent and the reasons for the decision must be in writing and a copy must be sent to the applicant within 21 days of the date the notice of driving prohibition was served on the applicant under section 215.41.

(7) If the superintendent is unable to send the decision to the applicant within the 21 day period set out in subsection (6), the superintendent may extend that period for a period determined by the superintendent.

(8) If the superintendent extends the period for sending a decision to the applicant under subsection (7), the superintendent may

- (a) stay the driving prohibition imposed on the applicant under section 215.43 for the period of the extension determined under subsection (7), and
- (b) if the applicant held a valid licence or permit issued under this Act to operate a motor vehicle at the time the applicant was served with

the notice of driving prohibition under section 215.41, direct the Insurance Corporation of British Columbia to issue to the applicant a temporary driver's licence that expires with the period of extension determined under subsection (7).

(9) The superintendent must promptly give the person notice of an extension made under subsection (7).

(10) The copy referred to in subsection (6) and the notice referred to in subsection (9) must be sent to the person

(a) at the last known address of the person as shown in the records maintained by the Insurance Corporation of British Columbia, or

(b) at the address shown in the application for review, if that address is different from the address in the Insurance Corporation of British Columbia's records.

(11) A notice of extension given under subsection (9) is deemed to be a notice of prohibition for the purposes of section 95 (4) (a) or (b).

Regulations – automatic roadside driving prohibitions

215.51 Without limiting the authority of the Lieutenant Governor in Council to make regulations under any other provision of this Act, the Lieutenant Governor in Council may make regulations as follows:

(a) prescribing an approved screening device for the purposes of the definition of “approved screening device” in section 215.41 (2);

(b) prescribing the form of notice of driving prohibition for the purposes of section 215.41 (6);

(c) for the purposes of section 215.44,

(i) prescribing monetary penalties, including prescribing a schedule of increasing monetary penalties based on whether a driving prohibition is a first, second or subsequent prohibition as described in section 215.43 (4), and

(ii) prescribing the manner for payment of monetary penalties;

(d) prescribing hearing fees, including oral hearing fees, for the purposes of section 215.48.

Inspectors, inspection facilities and standards

217 (1) For the purposes of section 216, the director may

- (a) authorize persons to inspect vehicles,
- (b) designate facilities operated by the government or a municipality or other person as facilities for different classes of inspections, and
- (c) on conditions the Lieutenant Governor in Council requires, exempt a vehicle from inspection.

(1.1) The director may do one or both of the following:

- (a) impose conditions on an authorization or designation referred to in subsection (1) at the time the director makes the authorization or designation or at another time during which the authorization or designation is in effect;
- (b) make an authorization or designation referred to in subsection (1) subject to a specified term.

(2) For the purposes of section 216, the minister may, by regulation, do one or more of the following:

- (a) establish standards of, and criteria and guidelines for, inspections relating to safety and repair for different classes of vehicles;
- (b) prescribe standards of inspections or establish standards of, and criteria and guidelines for, inspections relating to emissions for different classes of vehicles;
- (c) set out requirements that must be met or guidelines that must be followed by the persons who are designated under subsection (1) relating to maintenance of the facility and equipment and reference materials that must be kept at a designated facility;
- (d) governing the manner in which persons authorized under subsection (1) must perform inspections.

(2.1) In making a regulation under subsection (2), the minister may adopt with or without modification one or more or a part of the provisions of a code, standard or

rule respecting vehicle safety, emission or repair, as they may be amended from time to time before or after the making of the regulation, including, without limiting this, a standard set by the Canadian Council of Motor Transport Administrators.

(3) The Lieutenant Governor in Council may provide by regulation that

(a) contravention of

- (i) a regulation of the minister under subsection (2) by a person who is authorized or designated under subsection (1), or
- (ii) a standard prescribed by the minister under section 218 (2),

constitutes an offence, and

(b) a person who commits an offence under paragraph (a) is liable to a penalty not greater than the penalties provided under the *Offence Act*.

Standards and approvals

218 (1) The director may do one or more of the following:

- (a) designate equipment or classes of equipment for which approval by the director is required as a condition precedent to the first retail sale of the equipment;
- (b) approve equipment conforming to the safety or emissions standards prescribed by the minister under subsection (2).
- (c) [Repealed 2003-11-23.]

(2) The minister may prescribe safety or emissions standards for a vehicle or its equipment that is offered for sale, exposed or displayed for sale, sold or delivered to a purchaser for use.

Report of psychologist, optometrist and medical practitioner

230 (1) This section applies to every legally qualified and registered psychologist, optometrist and medical practitioner who has a patient 16 years of age or older who

(a) in the opinion of the psychologist, optometrist or medical practitioner has a medical condition that makes it dangerous to the patient or to the public for the patient to drive a motor vehicle, and

(b) continues to drive a motor vehicle after being warned of the danger by the psychologist, optometrist or medical practitioner.

(2) Every psychologist, optometrist and medical practitioner referred to in subsection (1) must report to the superintendent the name, address and medical condition of a patient referred to in subsection (1).

(3) No action for damages lies or may be brought against a psychologist, an optometrist or a medical practitioner for making a report under this section, unless the psychologist, optometrist or medical practitioner made the report falsely and maliciously.

Definitions

250 In this Part:

"impound" includes to immobilize, in a manner approved by the superintendent, a motor vehicle at the place referred to in section 215.46 or 251 (1) (g);

"irreparable vehicle" means a motor vehicle that has its title transferred, under an agreement referred to in section 255 (8), to a person who, in accordance with that agreement, is to transfer the title of the motor vehicle to a person who is in the business of wrecking used motor vehicles and who intends to use the motor vehicle for parts or scrap;

"person who has custody", when used in reference to a motor vehicle, includes a person who has, at the direction of a peace officer under section 215.46 or 251 (1) (g), impounded a motor vehicle by immobilizing it;

"race" means circumstances in which, taking into account the condition of the highway, traffic, visibility and weather, the driver or operator of a motor

vehicle is driving or operating the motor vehicle without reasonable consideration for other persons using the highway or in a manner that may cause harm to an individual by doing any of the following:

- (a) outdistancing or attempting to outdistance one or more other motor vehicles;
- (b) preventing or attempting to prevent one or more other motor vehicles from passing;
- (c) driving at excessive speed in order to arrive at or attempt to arrive at a given destination ahead of one or more other motor vehicles;

"stunt" means circumstances in which, taking into account the condition of the highway, traffic, visibility and weather, the driver or operator of a motor vehicle is driving or operating the motor vehicle without reasonable consideration for other persons using the highway or in a manner that is likely to cause harm to an individual or likely to distract, startle or interfere with users of the highway by doing any of the following:

- (a) causing any or all of the motor vehicle's tires to lift from the road surface;
- (b) causing the motor vehicle to lose traction while turning the motor vehicle;
- (c) driving the motor vehicle in a manner to cause the motor vehicle to spin;
- (d) driving the motor vehicle in a lane intended for oncoming traffic for longer than necessary to pass another vehicle;
- (e) slowing or stopping the motor vehicle in a manner that prevents other motor vehicles from passing or in a manner that blocks or impedes other motor vehicles;
- (f) without justification, driving as close as possible to another motor vehicle, a pedestrian, or a fixed object.

Impoundment of motor vehicle

251 (1) If a peace officer has reasonable grounds to believe that a person

(a) has driven or operated a motor vehicle on a highway while the person is prohibited from driving a motor vehicle under

(i) this Act, or

(ii) the *Youth Justice Act*, the *Youth Criminal Justice Act* (Canada) or the *Criminal Code*,

(b) has driven or operated a motor vehicle on a highway while the person's driver's licence and his or her right to apply for or obtain a driver's licence are suspended under section 89 (1) (b) or (c), 232 or 233,

(c) has driven or operated a motor vehicle on a highway while

(i) the person did not hold a subsisting driver's licence issued under this Act and was not exempt under section 34 from holding a driver's licence issued under this Act, and

(ii) a notice under section 252 was in place on the driving record of the person,

(d) has committed an offence under section 148,

(e) has driven or operated a motor vehicle on a highway in a race or in a stunt and the peace officer intends to charge the person with a motor vehicle related *Criminal Code* offence or an offence under section 144 (1), 146 or 148 of this Act, or

(f) has committed an offence under

(i) section 194 (1) or (2), or

(ii) section 25 (15) by violating a requirement, restriction or condition prescribed under section 25 in relation to a driver's licence that allows the person to drive or operate a motorcycle, which requirement, restriction or condition is specified in the regulations for the purposes of this provision,

the peace officer or another peace officer must

(g) cause the motor vehicle to be taken to and impounded at a place directed by the peace officer, and

(h) if paragraph (c) of this subsection applies, serve on the person a notice of driving prohibition in the form established by the superintendent.

(2) The notice of driving prohibition referred to in subsection (1) (h) must contain all of the following:

(a) a statement of the right to have the driving prohibition reviewed by the superintendent under section 259;

(b) instructions describing how to apply for that review;

(c) a statement that unless the person applies for a review under section 259 and the review results in the revocation of a prohibition under section 261, the person is prohibited from driving until he or she is issued a driver's licence under this Act.

(3) A peace officer who serves a notice of driving prohibition under subsection (1) (h) must promptly forward to the superintendent

(a) a copy of the notice of driving prohibition, and

(b) a certificate of service, in the form established by the superintendent, showing that the notice of driving prohibition was personally served on the person subject to the prohibition.

(4) If a person is served with a notice of driving prohibition under subsection (1) (h), the person is prohibited from driving a motor vehicle until the person is issued a driver's licence under this Act or the notice of driving prohibition is revoked under section 261.

(5) If a peace officer is satisfied that the impoundment of a motor vehicle under subsection (1) or section 215.46 would

(a) jeopardize the safety of the occupants of the motor vehicle, or

(b) leave the occupants stranded,

the peace officer must arrange for transportation of the occupants of the motor vehicle to the nearest safe area where they can summon an alternative form of transportation.

(6) Personal property present in a motor vehicle that has been impounded under subsection (1) or section 215.46, other than personal property attached to or used

in connection with the operation of the motor vehicle, must be returned to the owner on request.

(7) Despite subsection (1) or section 215.46, if, at any time before a review is conducted under section 256 a peace officer is satisfied that a motor vehicle impounded under subsection (1) of this section or section 215.46 is stolen property, the peace officer must

(a) order the person who has custody of the motor vehicle to release the motor vehicle to the owner or a person authorized by the owner on payment by the owner or other person of the fees, costs, charges, surcharges and the deposit, if applicable, referred to in section 255 (2), and

(b) promptly give notice to the superintendent of the release of the impounded motor vehicle.

(8) If the person who was driving or operating a motor vehicle at the time the motor vehicle was impounded under subsection (1) or section 215.46 is not the owner of the motor vehicle, the person must make all reasonable efforts to notify as soon as practicable the owner that the motor vehicle has been impounded.

(9) If the Insurance Corporation of British Columbia issues a driver's licence under this Act to the person who was driving or operating a motor vehicle at the time the motor vehicle was impounded in accordance with subsection (1) (c), the superintendent must, if the fees, costs, charges, surcharges and the deposit, if applicable, referred to in section 255 (2) have been paid to the person who has custody of the motor vehicle, order that the motor vehicle be released to the owner or a person authorized by the owner.

Liability for impoundment

252 (1) The Insurance Corporation of British Columbia, for the purposes of motor vehicle impoundments in accordance with section 251 (1) (c) and driving prohibitions under section 251 (4), must place a notice on the driving record of the following persons indicating that, if the person drives or operates a motor vehicle on a highway, the motor vehicle is liable to be impounded and the person prohibited from driving under those sections:

(a) a person who has been convicted of an offence under section 24 (1) since the expiry or cancellation of the most recent driver's licence issued to the person under this Act;

(b) a person who has been convicted of an offence under section 24 (1) and who has never held a driver's licence under this Act.

(2) If the Insurance Corporation of British Columbia issues a driver's licence under this Act to a person referred to in subsection (1) (a) or (b),

(a) the corporation must remove a notice placed on the driving record of the person under subsection (1), and

(b) the superintendent must terminate any prohibition served under section 251 (1) (h) as a result of the notice.

Period of impoundment

253 (1) In this section, "**impounded motor vehicle**" means a motor vehicle that has been impounded by an impoundment

(a) authorized under any of paragraphs (a) to (f) of section 251 (1), and

(b) not revoked under section 258,

but does not include a motor vehicle impounded under section 215.46 or 251 (1) that is released under section 251 (7).

(2) Subject to section 255 (5), a motor vehicle impounded under any of paragraphs (a) to (f) of section 251 (1) is to remain impounded for a period of 7 days from the day it is impounded.

(3) Despite subsection (2) and subject to section 255 (5),

(a) if the owner of a motor vehicle impounded under any of paragraphs (a) to (f) of section 251 (1) has once within the 2 years before the date of the impoundment been the owner of an impounded motor vehicle, the motor vehicle is to remain impounded for a period of 30 days from the day it is impounded, and

(b) if the owner of a motor vehicle impounded under any of paragraphs (a) to (f) of section 251 (1) has on 2 or more occasions

within the 2 years before the date of the impoundment been the owner of an impounded motor vehicle, the motor vehicle is to remain impounded for a period of 60 days from the day it is impounded.

(4) If a motor vehicle is subject to the period of impoundment authorized under subsection (3) (a) or (b), the superintendent must give to

(a) the registered owner of the motor vehicle, and

(b) the person who has custody of the motor vehicle under the impoundment

notice that, unless the superintendent revokes the impoundment under section 258, the motor vehicle will not be released until the expiry of the period of impoundment authorized under subsection (3) (a) or (b) of this section, as applicable.

(5) The notice required by subsection (4) (a) must be sent by mail to the last known address of the registered owner as shown in the records maintained by the Insurance Corporation of British Columbia.

(6) Subject to section 255 (5), a motor vehicle impounded under section 215.46 (1) is to remain impounded for a period equal to the period that the person referred to in section 215.46 (1) is prohibited from driving under section 215.43 (1) (a) or (b).

(7) Subject to section 255 (5), a motor vehicle impounded under section 215.46 (2) is to remain impounded for a period of 30 days from the day it is impounded.

(8) If a driving prohibition is substituted or revoked under section 215.5, the superintendent must,

(a) in the case of a substitution of a 3-day or 7-day prohibition for a 30-day or 90-day prohibition, revoke the corresponding impoundment imposed under section 215.46,

(b) in the case of a substitution of a 3-day prohibition for a 7-day prohibition, vary to the same extent the corresponding impoundment imposed under section 215.46, if any, or

(c) in the case of a revocation, revoke the corresponding impoundment imposed under section 215.46,

and subject to the lien described in section 255 (2), the expiry of the period of impoundment in the case of a substitution and the expiry of another period of impoundment, if any, under section 251 (1), order the person who has custody of the motor vehicle to release the motor vehicle to the owner or a person authorized by the owner.

Duties of peace officer

254 (1) A peace officer who impounds a motor vehicle under section 215.46 or 251 (1) must

- (a) complete a notice of impoundment,
- (b) give a copy of the notice of impoundment to the driver and the person who has custody of the motor vehicle, and
- (c) forward to the superintendent
 - (i) a report, in the form established by the superintendent, and
 - (ii) a copy of the notice of impoundment.

(2) When the superintendent receives a copy of the notice of impoundment under subsection (1) (c) (ii), the superintendent must promptly send a copy of that notice by mail to the last known address of the registered owner of the motor vehicle as shown in the records maintained by the Insurance Corporation of British Columbia.

(3) The notice of impoundment must contain

- (a) a statement of the right to have the impoundment reviewed by the superintendent under section 256,
- (b) instructions describing how to apply for that review,
- (c) a statement that unless the owner of the motor vehicle applies for a review under section 256, the motor vehicle will be impounded for the period authorized under section 253,
- (d) a statement that the filing of an application for review does not stay the impoundment of the motor vehicle, and
- (e) a statement that if the owner of the motor vehicle does not pay the fees, costs, charges, surcharges and the deposit, if applicable, referred

to in section 255 (2), the motor vehicle may be disposed of under the *Warehouse Lien Act* or under section 255 (7) of this Act.

Review of impoundment

256 (1) The owner of a motor vehicle impounded under section 215.46 (2) for a period of 30 days or under section 251 (1) for a period of 30 or 60 days may, within 15 days after the impoundment begins, apply to the superintendent for a review of the impoundment by

- (a) filing an application for review with the superintendent, and
- (b) paying to the superintendent the prescribed hearing fee.

(2) An application for review must be in the form, contain the information and be completed in the manner required by the superintendent.

(3) An applicant may attach to the application for review any statements or other evidence that the applicant wishes the superintendent to consider.

(4) The filing of an application for review does not stay the impoundment of the motor vehicle.

(5) The superintendent is not required to hold an oral hearing unless the applicant

- (a) requests an oral hearing at the time of filing the application for review, and

- (b) pays the prescribed oral hearing fees.

(6) If a person requests an oral hearing and fails to appear on the date and at the time and place arranged for the hearing, without prior notice to the superintendent, the right to an oral hearing is deemed to have been waived by the person.

Considerations for review of impoundment

257 In a review under section 256 of a motor vehicle impoundment, the superintendent

- (a) must consider the report of the peace officer forwarded under section 254 (1) (c) (i), and

- (b) may consider

- (i) the driving record of the person named as the driver of the motor vehicle in a copy of the notice of impoundment completed under section 254, or

(ii) information and records kept by the superintendent under this Act in relation to any previous impoundments under section 215.46 or 251 (1), or under section 104.1 (1), 105 (1), 105.1 (1), 242 (1) or 243 (1) before their repeal, of motor vehicles owned by the person who applied for the review.

Decision of superintendent on review of impoundment

258 (1) If, after considering an application for review made under section 256 by an owner who was not the driver or operator of the motor vehicle at the time the motor vehicle was impounded, the superintendent is satisfied

(a) that the driver or operator was in possession of the motor vehicle without the knowledge or consent of the owner,

(b) that the owner exercised reasonable care and diligence in entrusting the motor vehicle to the person who was, at the time of the impoundment, in possession of the motor vehicle,

(c) if the impoundment was made under section 251 (1) (a), that the driver or operator was not prohibited from driving under any of the provisions referred to in section 251 (1) (a) at the time the motor vehicle was impounded,

(d) if the impoundment was made under section 251 (1) (b), that the driver's or operator's driver's licence and his or her right to apply for or obtain a driver's licence were not suspended under section 89 (1) (b) or (c), 232 or 233 at the time the motor vehicle was impounded, or

(e) if the impoundment was made under section 251 (1) (c), that

(i) at the time the motor vehicle was impounded, the driver or operator

(A) held a subsisting driver's licence issued under this Act, or

(B) was exempt under section 34 from holding a driver's licence issued under this Act, or

(ii) a notice should not have been placed on the driving record of the driver under section 252 (1),

the superintendent must

(f) revoke the impoundment, and

(g) subject to the lien described in section 255 (2), order the person who has custody of the motor vehicle to release the motor vehicle to the owner or a person authorized by the owner.

(2) If, after considering an application for review made under section 256 by an owner who was the driver or operator of the motor vehicle at the time the motor vehicle was impounded, the superintendent is satisfied

(a) if the impoundment was made under section 251 (1) (a), that the owner

(i) was not prohibited from driving under any of the provisions referred to in section 251 (1) (a) at the time the motor vehicle was impounded, or

(ii) before he or she drove or operated the motor vehicle, had no reason to believe that he or she was prohibited from driving under any of the provisions referred to in section 251 (1) (a),

(b) if the impoundment was made under section 251 (1) (b), that

(i) the owner's driver's licence and his or her right to apply for or obtain a driver's licence were not suspended under section 89 (1) (b) or (c), 232 or 233 at the time the motor vehicle was impounded, or

(ii) before he or she drove or operated the motor vehicle, the owner had no reason to believe that his or her driver's licence and his or her right to apply for or obtain a driver's licence were suspended under a section referred to in subparagraph (i) of this paragraph, or

(c) if the impoundment was made under section 251 (1) (c), that

(i) at the time the motor vehicle was impounded, the owner

(A) held a subsisting driver's licence issued under this Act, or

(B) was exempt under section 34 from holding a driver's licence issued under this Act,

(ii) before he or she drove or operated the motor vehicle, the owner had a reasonable belief that he or she

(A) held a subsisting driver's licence issued under this Act, or

(B) was exempt under section 34 from holding a driver's licence issued under this Act, or

(iii) a notice should not have been placed on the driving record of the owner under section 252 (1),

the superintendent must

(d) revoke the impoundment, and

(e) subject to the lien described in section 255 (2), order the person who has custody of the motor vehicle to release the motor vehicle to the owner or a person authorized by the owner.

(3) If, after considering an application for review made under section 256 by an owner of a motor vehicle impounded under section 251 (1), the superintendent is satisfied that the period of impoundment determined under section 253 is not supported by the facts of the case, the superintendent must

(a) adjust the period of impoundment in accordance with section 253, or

(b) if the period of impoundment has expired, subject to the lien described in section 255 (2), order the person who has custody of the motor vehicle to release the motor vehicle to the owner or a person authorized by the owner.

(4) The decision of the superintendent under subsection (1), (2) or (3), and the reasons for the decision, must be in writing and a copy must be sent to the applicant within 7 days of the date the application was considered or the oral hearing was held.

(5) The copy referred to in subsection (4) must be sent to the applicant

(a) at the last known address of the applicant as shown in the records maintained by the Insurance Corporation of British Columbia, or

(b) at the address shown in the application for review, if that address is different from the address in the Insurance Corporation of British Columbia's records.

Review of driving prohibition

259 (1) A person may, after being served with a notice of driving prohibition under section 251

(1) (h), apply to the superintendent for a review of the driving prohibition by

(a) filing an application for review with the superintendent, and

(b) paying to the superintendent the prescribed hearing fee.

(2) An application for review must be in the form, contain the information and be completed in the manner required by the superintendent.

(3) An applicant may attach to the application for review any written statements or other evidence that the applicant wishes the superintendent to consider.

(4) The superintendent must conduct a review under this section on the basis of written submissions and must not hold an oral hearing.

Considerations for review of driving prohibition

260 In a review of a driving prohibition under section 259, the superintendent may consider only

(a) the driving record of the person on whom the notice of driving prohibition was served, and

(b) relevant information provided by the person on whom the notice of driving prohibition was served.

Decision of superintendent on review of driving prohibition

261 If, after considering an application for review under section 259, the superintendent is satisfied that

(a) the person, at the time the notice of driving prohibition was served, was exempt under section 34 from holding a driver's licence issued under this Act,

(b) the person has, since the notice of driving prohibition was served, become exempt under section 34 from holding a driver's licence issued under this Act, or

(c) a notice should not have been placed on the driving record of the person under section 252 (1),

the superintendent must

(d) revoke the notice of driving prohibition, and

(e) if the superintendent is satisfied of the matter referred to in paragraph (c) of this subsection, direct the Insurance Corporation of British Columbia to remove the notice referred to in that paragraph.

APPENDIX A

Supreme Court of Canada



Cour suprême du Canada

January 21, 2015

le 21 janvier 2015

ORDER
MOTIONORDONNANCE
REQUÊTE

RICHARD JAMES GOODWIN v. BRITISH COLUMBIA (SUPERINTENDENT OF MOTOR VEHICLES) AND ATTORNEY GENERAL OF BRITISH COLUMBIA – and between – BRITISH COLUMBIA (SUPERINTENDENT OF MOTOR VEHICLES) AND ATTORNEY GENERAL OF BRITISH COLUMBIA v. JAMIE ALLEN CHISHOLM – and between – BRITISH COLUMBIA (SUPERINTENDENT OF MOTOR VEHICLES) AND ATTORNEY GENERAL OF BRITISH COLUMBIA v. SCOTT ROBERTS – and between – BRITISH COLUMBIA (SUPERINTENDENT OF MOTOR VEHICLES) AND ATTORNEY GENERAL OF BRITISH COLUMBIA v. CAROL MARION BEAM – and between – BRITISH COLUMBIA (SUPERINTENDENT OF MOTOR VEHICLES) AND ATTORNEY GENERAL OF BRITISH COLUMBIA v. RICHARD JAMES GOODWIN (B.C.) (35864)

THE CHIEF JUSTICE:

UPON APPLICATION by the appellants/respondents, Richard James Goodwin et al., for an order stating constitutional questions in the above appeal;

AND UPON APPLICATION by the respondents/appellants, British Columbia (Superintendent of Motor Vehicles) et al., for an order stating constitutional questions in the above appeal;

AND THE MATERIAL FILED having been read;

IT IS HEREBY ORDERED THAT THE CONSTITUTIONAL QUESTIONS BE STATED AS FOLLOWS:

1. Are ss. 215.41 to 215.51 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, as enacted on September 20, 2010 *ultra vires* the province of British Columbia as being exclusively within the federal government's criminal law power under s. 91(27) of the *Constitution Act, 1867*?
2. Do ss. 215.41 to 215.51 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, as enacted on September 20, 2010 infringe s. 8 of the *Canadian Charter of Rights and Freedoms*?
3. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

4. Do ss. 215.41 to 215.51 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, as enacted on September 20, 2010 infringe s. 11(d) of the *Canadian Charter of Rights and Freedoms*?
5. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

Any attorney general who intervenes pursuant to par. 61(4) of the *Rules of the Supreme Court of Canada* shall pay the appellants and respondents the costs of any additional disbursements they incur as a result of the intervention.

À LA SUITE DE LA DEMANDE des appelants/intimés, Richard Goodwin et autres, visant à obtenir la formulation de questions constitutionnelles dans l'appel susmentionné;

ET À LA SUITE DE LA DEMANDE des intimés/appellants, le Superintendent of Motor Vehicles de la Colombie-Britannique et autre, visant à obtenir la formulation de questions constitutionnelles dans l'appel susmentionné;

ET APRÈS AVOIR EU la documentation déposée;

LES QUESTIONS CONSTITUTIONNELLES SUIVANTES SONT FORMULÉES :

1. Les art. 215.41 à 215.51 de la *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, tel qu'ils ont été édictés le 20 septembre 2010, outrepassent-ils la compétence de la province de la Colombie-Britannique du fait qu'ils relèvent exclusivement de la compétence du gouvernement fédéral en matière criminelle en vertu du par. 91(27) de la *Loi constitutionnelle de 1867*?
2. Les art. 215.41 à 215.51 de la *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, tel qu'ils ont été édictés le 20 septembre 2010, portent-ils atteinte au droit protégé par l'art. 8 de la *Charte canadienne des droits et libertés*?
3. Dans l'affirmative, s'agit-il d'une atteinte constituant une limite raisonnable, établie par une règle de droit et dont la justification peut se démontrer dans le cadre d'une société libre et démocratique conformément à l'article premier de la *Charte canadienne des droits et libertés*?
4. Les art. 215.41 à 215.51 de la *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, tel qu'ils ont été édictés le 20 septembre 2010, portent-ils atteinte au droit protégé par l'al. 11(d) de la *Charte canadienne des droits et libertés*?
5. Dans l'affirmative, s'agit-il d'une atteinte constituant une limite raisonnable, établie par une règle de droit et dont la justification peut se démontrer dans le cadre d'une société libre

et démocratique conformément à l'article premier de la *Charte canadienne des droits et libertés*?

Tout procureur général qui interviendra en vertu du par. 61(4) des *Règles de la Cour suprême du Canada* sera tenu de payer aux appelants et aux intimés les dépens supplémentaires résultant de son intervention.


C.J.C.
J.C.C.

APPENDIX B

**Legislation from All Canadian Jurisdictions on Vehicle Licencing Suspensions Relating to
Drinking and Driving**

Province	British Columbia		
Legislation	<i>Motor Vehicle Act</i> , (current version) R.S.B.C. 1996, c. 318 ss. 25, 215, 215.1, 215.2, 215.3, 215.4, 215.41, 215.43, 215.46 and 215.48		
Types of Prohibitions	If an officer has reasonable grounds to believe that an individual is affected by alcohol s. 215(2)	Warn (0.05) s. 215.41(2)	Fail (0.08) or Refusal s. 215.41(2) and (4)
	Immediate s. 215(5)	Immediate s. 215.43(3)	Immediate s. 215.43(3)
	24 hours s. 215	First -3 days s. 215.43(1)(a) Second – 7 days s. 215.43(1)(b) Third and Subsequent – 30 days s. 215.43(1)(c)	90 days s. 215.43(2.1) [s. 215.43(2) in 2010 version of IRP Scheme]
Review of Prohibition	Yes s. 215.1(1)	Yes s. 215.48(1)	Yes s. 215.48(1)
Impoundment	Yes Varies in duration depending on prohibition s. 215.4, 215.46(1) and (2)		
Education	Yes s. 25.1, discretionary		
Ignition Interlock	Yes s. 25.1, discretionary		

Province	Alberta		
Legislation	<i>Traffic Safety Act</i> , R.S.A. 2000, c. T-6 ss. 39, 39.2, 88, 88.1, 88.2, 89 and 172.1(1)		
Types of Prohibitions	If an officer reasonably suspects that an individual is affected by alcohol s. 89(1)(b)	Warn (0.05) s. 88(2)(b)	Fail (0.08) or Refusal s. 88.1(2)(a)
	Immediate s. 89(2)(a)	Immediate s. 88(3)(a)	Immediate s. 88.1(3)(a)
	24 hours s. 89(4)	First — 3 days s. 88(3)(a)(i) Second — 15 days s. 88(3)(a)(ii) Third and Subsequent — 30 days s. 88(3)(a)(iii)	Until disposition of criminal charges s. 88.1(3)(a)
Review of Prohibition	No (for first time)	Yes s. 39	Yes s. 39.2(1)
Impoundment	Yes s. 172.1(1)		
Education	Yes s. 88(5) — on a second or subsequent suspension		
Ignition Interlock	Yes s. 88.2 — voluntary to set aside disqualification		

Province	Saskatchewan	
Legislation	<i>The Traffic Safety Act</i> , S.S. 2004, c. T-18.1 ss. 29, 146, 146.1, 148, 150.2, 152, 153	
Types of Prohibitions	0.04 s. 146(2)	0.08 or Refusal s. 148(2)(a) and (b)
	Immediate s. 146(5)(a)	Immediate s. 148(4)(a)
	First suspension — 72 hours if 5 years prior are clean s. 146(4)(a)(i)	Until disposition of criminal charges s. 148(5)
	Second suspension — 21 days s. 146(4)(a)(ii)	
	Third and subsequent suspension — 90 days s. 146(4)(a)(iii)	
Review of Prohibition	Yes s. 152, see also s. 146(8)	Yes s. 153(2)
Impoundment	Yes Second suspension in 5 years, 7 days – s. 146(4)(b)(i) Third and subsequent suspension in 5 years, 14 days – s. 146(4)(b)(ii) 0.08/Refusal – 30-60 days - ss. 148(3)(c), 148(5)(b)(i-iii) See also s. 150.2	
Education	Yes s. 146(6), 148(6)	
Ignition Interlock	Yes ss. 146(9) and 148(7)-(10)	

Province	Manitoba	
Legislation	<i>The Highway Traffic Act</i> , C.C.S.M., c. H60 ss. 242.1(1.1)(7.1) and (7.1.1)-(7.2), 263.1, 263.2, 279, and 279.1-279.3	
Types of Prohibitions	0.05 s. 263.1(2)(c)	0.08 or Refusal s. 263.1(2)(a)
	Immediate s. 263.1(7)	Immediate s. 263.1(7)
	First suspension — 24 hours s. 263.1(7)(2)(a) Second suspension — 15 days s. 263.1(7)(2)(b) Third suspension — 30 days s. 263.1(7)(2)(c) Fourth suspension — 60 days s. 263.1(7)(2)(d)	3 months s. 263.1(7)(1)
Review of Prohibition	Yes s. 263.2(1)	Yes s. 263.2(1)
Impoundment	Yes s. 263.1(17) s. 242.1(1.1)(b)(c) and (d) — between 30-60 days dependent on blood alcohol concentration Also may vary depending on number of previous impoundments, see s. 242.1(7.1) and (7.1.1)-(7.2) s. 242.1(1.1) – for 0.08 or refusal	
Education	Yes – dependent on number of suspensions Driver Assessment at the Addictions Foundation of Manitoba	
Ignition Interlock	Yes s. 279(21) and (21.1), 279.1-279.3	

Province	Ontario	
Legislation	<i>Highway Traffic Act</i> , R.S.O. 1990, c. H.8 ss. 48, 48.3, 48.4, 50.1(1) and 57	
Types of Prohibitions	0.05 s. 48(2)	0.08 or Refusal s. 48.3(3)
	Immediate s. 48(4)	Immediate s. 48.3(7)
	First suspension — 3 days s. 48(14)(a) Second suspension — 7 days s. 48(14)(b) Third and subsequent suspension — 30 days s. 48(14)(c)	90 days s. 48.3(2)
Review of Prohibition	No s. 48(9)	Yes s. 50.1(1)
Impoundment	Yes – 7 days for blood alcohol of 0.08 or refusal s. 48(12) and 48.3(11) – if in the opinion of the peace officer and no person available who may lawfully move the vehicle 48.4 - failure or refusal	
Education	Yes s. 57(1), (2) and (3)	
Ignition Interlock	Yes s. 57(1), (2) and (3)	

Province	Quebec
Legislation	<i>Highway Safety Code</i> , R.S.Q., c. C-24.2 ss. 64, 73, 76, 76.1.2 – 76.1.6, 202.0.1, 202.0.3, 202.4, 202.5, 202.6.2, 209.2.1, 209.2.1.1, and 209.2.1.2
Types of Prohibitions	0.08 or Refusal ss. 202.4(1), 202.5
	Immediate s. 202.4
	90 days s. 202.4(1) and 202.5
Review of Prohibition	Yes s. 202.6.2
Impoundment	Yes - 30-90 days, dependent on blood alcohol and licence status s. 209.2.1, 209.2.1.1, 209.2.1.2
Education	Yes ss. 73, 76.1.2 – 76.1.6
Ignition Interlock	Yes ss. 64, 73, 202.0.01

Province	New Brunswick	
Legislation	<i>Motor Vehicle Act</i> , R.S.N.B. 1973, c. M-17 ss. 301(2), 310.01, 310.04, 310.05, 310.11, 310.12, 310.13 and 311(1)	
Types of Prohibitions	0.05 s. 310.01(1) and (2)	0.08 Refusal s. 310.04(2)(a) and (b)
	Immediate s. 310.01(4)	Immediate s. 310.04(3)
	7 days s. 310.01(4)	3 months s. 310.04(9)
Review of Prohibition	Yes s. 311(1)	Yes s. 310.05
Impoundment	Yes ss. 310.01(11) and (12) – when licence is revoked if the vehicle is in a location from which, in the opinion of the peace officer, it should be removed and there is no person with a licence easily available to move the vehicle with consent	
Education	Yes s. 301(2), for <i>Criminal Code</i> offences there is mandatory re-education	
Ignition Interlock	Yes s. 310.11, 310.12, 310.13	

Province	Nova Scotia	
Legislation	<i>Motor Vehicle Act</i> , R.S.N.S. 1989, c. 293 ss. 66, 273, 279A, 279B, 279C, 279BA, 280 and 280A	
Types of Prohibitions	0.05 s. 279C(2)(b)	0.08 Refusal s. 279A(1)(i) and (ii)
	Immediate s. 279C(4)	Commences after expiry of 7 day temporary licence s. 279A(1)(c)(i)
	First suspension — 7 days s. 279C(4)(a)	3 months s. 279A(5)
	Second suspension — 15 days s. 279C(4)(b)	
	Third and subsequent suspension — 30 days s. 279C(4)(c)	
Review of Prohibition	No	Yes ss. 279A(7), 279B
Impoundment	Yes s. 273 – when an offence is committed s.279C(11) – in the opinion of the peace officer and there is no person with a licence easily available to move the vehicle	
Education	Yes s. 66(1), 280	
Ignition Interlock	Yes s. 280A	

Province	Prince Edward Island	
Legislation	<i>Highway Traffic Act</i> , R.S.P.E.I. 1988, c. H-5 ss. 71, 73, 255.1, 255.2, 277.1 277.2, 277.3 and 277.5	
Types of Prohibitions	0.05 s. 277.1(1)(a)	0.08 or refusal s. 277.2(1)
	Immediate s. 277.1(3.2)	Immediately for 24 hours s. 277.2(1.1) Prohibition commences after expiry of 7 day temporary licence s. 277.3(1)(a)(i)
	First suspension — 7 days s. 277.1(3.2) Second suspension — 30 days s. 277.1(3.3) Third suspension — 90 days s. 277.1(3.5)	90 days s. 277.3(1)(a)(ii)
Review of Prohibition	Yes s. 277.1(5) – may seek early termination by voluntarily submitting to a test at a place designated by the peace officer	Yes s. 277.5(1)
Impoundment	Yes s. 277.1(7) – in the opinion of the peace officer and there is no person with a licence easily available to move the vehicle s. 255.1 –for specific offences	
Education	Yes s. 73	
Ignition Interlock	Yes ss. 71(4.1), 73(1.1) to (1.51)	

Province	Newfoundland and Labrador	
Legislation	<i>Highway Traffic Act</i> , R.S.N.L. 1990, c. H-3 ss. 60.01, 60.02, 60.03, 60.04, 60.2, 60.3, 65, 195(u.1) and (u.2)	
Types of Prohibitions	0.05 or Refusal s. 60.01(2)(a)	0.08 or Refusal s. 60.04(2)
	Immediate s. 60.03(1)(a) Commencing on the fourteenth day following his or her receipt of a copy of the certificate of analysis s. 60.04(1)	Commences on the 14 th day after the expiration of the 7 day suspension s. 60.04(2)
	7 days s. 60.03(1)(a) (a) for a second time, for 14 days; (b) for a third time, for 2 months; (c) for a fourth time, for 4 months; or (d) for a fifth or subsequent time, for 6 months. s. 60.2	90 days s. 60.04(2)
Review of Prohibition	No	No
Impoundment	Yes s. 60.3 – where the peace officer is of the opinion that the vehicle should be removed and there is no person with a driver's licence easily available to move the vehicle	
Education	Yes – Think First Program ss.65, 195(u.1) and (u.2)	
Ignition Interlock	Yes s. 65 – where convicted of an offence	

Territory	Yukon
Legislation	<i>Motor Vehicles Act</i> , R.S.Y. 2002, c. 153 ss. 235, 238, 256(1), 257, 259, 262, and 263
Types of Prohibitions	0.08 or Refusal s. 257(a) and (b)
	Temporary permit for 14 days s. 257(2)
	The prohibition remains in effect for the shorter of the following periods: (a) for 90 days; or (b) until the driver is convicted of an offence under the <i>Criminal Code</i> that arises out of the same circumstances s. 257(8)
Review of Prohibition	Yes s. 259(1)
Impoundment	Yes s. 235 – when driver's licence has been suspended, or when driving contrary to s. 5(1), 72, 266 or ss. 252, 253, 254 or 259 of the <i>Criminal Code</i> , the peace officer is given the discretion to impound the vehicle. Under s. 235(2) the peace officer may delay in certain circumstances. s. 238 – 30 – 120 days
Education	Yes - Information and Motivation for Positive Action and Choices Today (IMPACT) Program s. 263(1)
Ignition Interlock	Yes s. 262(4), for violations of the <i>Criminal Code</i>

Territory	Northwest Territories/Nunavut		
Legislation	<i>Motor Vehicle Act</i> , R.S.N.W.T 1988, C. M-16 ss. 77.1, 78, 116.1, 116.4, 116.5, 116.6, 116.7, 116.8, and 300		
Types of Prohibitions	If an officer has reasonable grounds to believe that an individual is adversely affected by alcohol s. 116.1	0.05 s. 116.4(3)	0.08 or Refusal s. 116.6(1)
	Immediate s. 116.1(3)	Immediate s. 116.4(b)	Immediate for 24 hours s. 116.6(2)(c)(i)(A) Prohibition begins after seven day expiry of temporary permit s. 116.6(3)(b)(i)
	24 hours s. 116.1(3)	24 hours, if the person has not been subject to a previous suspension s. 116.4(b)(i) 30 days, if the person has been subject to a previous suspension s. s. 116.4(b)(ii)	90 days s. 116.6(2)(c)(i)(B)
Review of Prohibition	No – see s. 116.1(8)-(10), if blood alcohol tested	Yes s. 116.5(1) – for 30 day prohibitions	Yes s. 116.8
Impoundment	Yes s. 300(1)(d) – when driver is involved in a contravention of the Act and the officer on reasonable grounds believes that the public interest requires the vehicle to be seized		
Education	Yes ss. 77.1, 78(1) – Registrar may impose terms and conditions the Registrar considers appropriate		
Ignition Interlock	Yes s. 78(2.1)		