5 Do’s and Don’ts if You Are Pulled Over for Impaired Driving

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It can happen to anyone. It doesn’t take much to turn a routine traffic stop into a criminal investigation because police are always on the lookout for signs of consumption and impairment. Even though many of these charges are handled administratively, you could still face liability depending on what you say or do during a roadside interaction. If police smell alcohol (even from another passenger), if you fumble with your licence, if your eyes are bloodshot – you could find yourself in the middle of an impaired driving investigation.

Impaired driving (or DUI as it is otherwise called) is one of the most commonly reported crimes in Canada. It is litigated in adult courts more than any other crime. But unlike most other criminal offences, impaired driving affects nearly every cross-section of society. It is not at all uncommon for people charged with impaired driving to be otherwise law-abiding community members with no previous exposure to the justice system. And it’s not hard to see why. Most people drink from time to time. Most people drive from time to time. Not only that, but during the festive season, for example, police set up “checkpoints” to carry out random spot checks. These spot checks can be fraught for drivers who don’t understand their obligations and the consequential decisions they may need to make during these encounters. Even if you haven’t had a drop of alcohol, you could incur liability for what you do or don’t do during a roadside stop.

Here are five tips to help if you find yourself in a roadside impaired driving investigation:

1. DO: Blow into a device if asked

Police are allowed to demand a breath sample if they have the requisite grounds. Depending on when the demand is made, police may only need a **suspicion** that you have alcohol in your body while driving (as opposed to holding a **belief** that you are driving while impaired).

You may be thinking, “This is ridiculous! I haven’t had a drink in weeks and my driving is impeccable!” Prove it by providing a sample (if asked). If you’re under the legal limit, no harm no foul.

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But if you **refuse** to provide a sample without a lawful excuse, your refusal may become a criminal offence. Things to consider:

- A conviction for refusal does not require evidence of:
  - impairment;
  - consumption;
  - any blood alcohol reading; or
  - even operation of a motor vehicle.
- A conviction for refusal carries the same penalties as impaired driving or driving over the legal limit.
- You can be convicted of refusal **and** impaired driving (and punished for both), but you can't be convicted of impaired driving and driving while over the legal limit.
- A refusal can be evidence of impairment.
- There are no "takebacks." Once you refuse, the offence is complete and, in most circumstances, you will not get another opportunity to comply.

There's really no upside to refusing. Even in the worst-case scenario, one conviction is better than two.

2. DON'T: Talk (more than you have to)

We've all heard it on TV: "Anything you say can and will be used against you." It's true (mostly). Obviously, you will have to answer questions and identify yourself. But the threshold for impairment is very low: if your ability to drive is even **slightly** impaired, you could be held liable. Evidence of slight impairment often includes:

- slurred speech
- incoherent or confused speech
- odour of alcohol on the breath
- belligerent attitude

Police will pay close attention to your speech to see if you're showing any of these signs of impairment. So be nice and answer the questions. But avoid small talk, arguments or any unnecessary opportunities for investigators to make these observations.

3. DO: Invoke your right to counsel

If you've been detained for an impaired driving investigation (beyond a brief roadside interaction), police must give you the opportunity to consult with counsel. This obligation can be fraught for police:

- If they fail to tell you about this right immediately once you're detained, it is possible to exclude evidence of impaired driving at trial.
- If they fail to provide you with a call to counsel as soon as practicable, it is possible to exclude evidence of impaired driving at trial.
- If they don't give you what you need to call a lawyer (privacy, a phonebook, etc.), it is possible to exclude evidence of impaired driving at trial.
- In order for breath samples to be used against you at trial, the samples must have been taken within

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two hours of driving. A call to counsel will eat up some of this time, and if police do not get two breath samples in that time frame, it is possible to exclude evidence of impaired driving at trial.
- If police seek evidence from you (breath samples, admission, etc.) after you say you want to talk to a lawyer but before you get a chance to speak to one, that evidence is also up for exclusion at trial.

So even if you don't have any legal questions, invoking this right places demands on the investigation. Any mistakes made in fulfilling this obligation may result in an acquittal if your matter goes to trial.

4. DO: Cooperate

Belligerence can be a sign of impairment. Attempting to delay or subvert the investigation can be evidence of a guilty conscience. If you go too far, you could be charged with obstruction or some other criminal offence. Plus, it never helps to be rude to people in positions of power.

- Be polite.
- Identify yourself (verbally and with documents when asked).
- Follow instructions.

If you believe your rights are being trampled on, tell your lawyer when you invoke your right to counsel. This may help you down the road but there is very little you can do during a roadside interaction to address a constitutional violation. Failing to comply with your legal obligations will only cause you more grief and potentially lead to more liability down the road. Cooperate now and complain later.

5. DO: Call a lawyer

Whether you're guilty or innocent, anyone who represents themselves has a fool for a lawyer. A lawyer can help with sentencing by informing you of mandatory minimum sentencing guidelines as well as the collateral consequences of a guilty plea. If you are contesting liability, you will absolutely need a lawyer, given all the technical aspects of impaired driving prosecutions (this article touches on a select few). Legislation in this area is highly technical and very complicated. By the way, this type of thinking starts at the roadside. If you can, take notes of your encounter when it is over and save them for your lawyer. The police will have notes. Why shouldn't you? Plenty of options exist for people who can't afford counsel, and a charge of impaired driving is not the time to go it alone.

Conclusion

An impaired driving investigation is very complicated. Just as there are many pitfalls for you as a driver, there are many hurdles in these investigations that can cause grief for investigators. You can't control whether or not these hurdles will inure themselves to your benefit. All you can do is set yourself up for success by limiting your exposure to liability at the side of the road. Do that by following these do's and don'ts if you get pulled over by

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police and find yourself in an impaired driving investigation.

If you are involved in a criminal law matter such as impaired driving, contact Neil Steen by phone **(204) 934-2506** or email **nsteen@tdslaw.com**.

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