

Breathalyzer protocol a little hazy

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When Mark Hughes was pulled over on suspicion of driving drunk and given a breathalyzer test in 2002, he noticed the technician hid the readout from him.

After his arrest on two impaired driving charges, he mentioned what he observed to his lawyer.

Eric Sutton was skeptical at first, but decided to investigate anyway.

At a hearing in municipal court in March, a Montreal police technician admitted outright she did in fact shield the screen displaying the breath sample reading from Hughes's view. They told him the results later, without him ever seeing the digital readout on the instrument.

Actually, the technician said, she always hides the number, because that's how she was taught to give the test.

Sutton was floored – not only to learn it had happened to his client, but that it might be common practice.

He says it's enough to have the case against Hughes thrown out of court, and has filed a motion for a stay of proceedings.

"There's just something surreptitious about it. I just think the police should operate with as much transparency as possible," Sutton said. "I was very, very surprised."

Police, for their part, say the challenge is to get fair and accurate breathalyzer readings that will stand up in court from test participants who are sometimes intoxicated and unruly.

When the case returns to court in November, the judge's decision could have implications for other drunk driving cases currently before the courts and affect police procedure.

Driving under the influence – or DUI in cop-speak – has been steadily declining in the country since it peaked in 1981, according to Statistics Canada.

But the national number-crunching service said impaired driving cases, nevertheless, made up about 12 per



JOHN MAHONEY THE GAZETTE

When conducting breathalyzer tests, police say they sometimes conceal the digital readout because drivers can become agitated and try to skew the results.

cent of charges on the books in 2002.

Nationwide, 66,682 motorists were charged with being drunk behind the wheel of a motor vehicle in 2002 – 16,762 of them in Quebec, according to StatsCan's sobering research.

Those charged with drunk driving offences are cut from a broad swath of society.

The premier of British Columbia, Gordon Campbell, had a run-in with the law while on holiday in Hawaii.

Former chief justice of Quebec Superior Court Lyse Lemieux, former Montreal Canadiens player Serge Savard and the alleged godfather of the Montreal mafia, Vito Rizzuto, all have faced or still face impaired driving charges in recent years.

Hughes is facing two charges: impaired driving and driving with a blood-alcohol level over the legal limit.

Hughes was calm and co-operative at the police station when he gave his breath samples. He never actually asked to see the digital readout, but was curious as to why the technician covered it with her hand.

At the March hearing, Const. Brenda Archibald, the technician, said the screen is hidden to ensure co-operation.

"It's less complicated for us," she said. She said she shares the results once the test is over. If the person blows over the legal limit of .08, she explains that charges will follow and a print-out of the breathalyzer test will be entered as evidence in their case.

Under questioning from Sutton, Archibald said this is how she was taught to administer the test.

Andrée Doré, a spokesperson for the École nationale de police du Québec in Nicolet, the province's police academy, said new recruits are instructed to put their hand over the screen.

The reason, she said, is that as a sample is being analyzed by the machine, the number fluctuates.

But once the final tally is reached, an indicator light should illuminate, she said. At that time, there would be no problem revealing the readout.

"We advise police officers not to show it until the very end," Doré said. "Otherwise, the person taking the test

might stop blowing and the results would be skewed."

Generally, according to police sources contacted for this article, concealing the readout is done to ensure compliance from those being asked to blow.

Two samples are needed to register a valid result, and the goal of the police is to ensure they get both readings and that they are as accurate as possible.

Some breathalyzer participants are agitated or belligerent and can become more so if they see that they have failed the breathalyzer.

Some might try to throw off the results by holding their breath or blowing more lightly into the sensor tube.

Montreal police spokesperson Sgt. Ian Lafrenière said covering the readout is common – but it's not policy.

"It's the way it's taught... but it's not written procedure," he said.

Reluctant to comment on a case currently before the courts, he said that generally speaking, police methods are constantly evolving as a result of legal decisions.

Sutton said he has looked high and low without finding a precedent for Hughes's experience.

"Courts have already criticized police for not disclosing what a blood alcohol reading is when (a person) asks for it," Sutton said. "This is hiding it and that's wrong."

A change in procedure is exactly what he would like to see.

At stake, Sutton said, is a fundamental precept of the justice system: that evidence mounted against an accused be unimpeachable and gathered fairly.

"If a person (taking the test) sees the readout and there's any discrepancy between what the readout says and what the breathalyzer machine prints out, the person should be able to testify about that in their own defence," he said. "He shouldn't be cornered into accepting what the breathalyzer machine prints out."

"Justice has to be seen to be done."

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