

## EDITORIAL

# Impaired thinking

Lengthy licence suspensions without convictions are an affront to justice

Effective July 1, anyone who blows over .08 in Alberta can have their licence suspended until criminal charges are resolved, which could take up to one year. If the punishment should fit the crime, an indefinite drivers' licence suspension for a year in the absence of a conviction is an affront to justice.

It is also out of line with more serious offences. Drivers do not face licence suspensions when charged with careless driving. The suspension only comes on conviction, according to D'Arcy DePoe, president of the Criminal Trial Lawyers' Association. "There is no other offence where you lose your licence in advance of losing at trial," DePoe told a member of the Herald's editorial board.

Make no mistake, nobody wants to condone drinking and driving, but at stake are issues of due process and rule of law. "This turns the justice system on its head," DePoe said. "You are asking someone to prove their innocence, when the obligation is on the state to prove guilt beyond reasonable doubt."

Despite the concerns of lawyers and civil libertarians, Alberta may be within its legal right to indefinitely suspend the licence of anyone caught blowing over .08 until convicted. It already has the power to suspend licences of those over .08 for short-term periods under its Alberta Administrative Licence Suspension legislation, which was introduced in 1999. Currently, drivers charged with being over .08 in Alberta get a 24-hour suspension, followed by a 21-day grace period to

make arrangements prior to the imposition of a three-month driving suspension. The new law would constitute a toughening of existing rules.

Last year, the B.C. Supreme Court struck down portions of similar impaired driving legislation in that province, but not because of the length of the suspensions, or the constitutionality of imposing them. The court ruled that the B.C. government did not give drivers who blew over .08 an adequate avenue to challenge administrative penalties handed out at the roadside. Alberta seems to have avoided that dilemma by informing drivers of their right to a second breathalyzer and the ability to appeal to the quasi-judicial Alberta Transportation Safety Board.

DePoe, however, believes these may be inadequate. The Alberta Transportation Safety Board, he says, does not follow normal rules of evidence, does not provide the opportunity to cross-examine arresting officers and has no appeal process beyond that level. As such, he believes Alberta could face a constitutional challenge of its new law.

For Alberta drivers, the other shoe drops Sept. 1, when those between .05 and .08 can have their licences suspended for three days and their vehicles impounded. One can live with a three-day suspension. But suspending one's licence for a year or longer until charges are resolved is a recipe for job loss and a gross miscarriage of justice should it ensnare the innocent. It runs counter to fundamental Canadian and Alberta values.