

## Informed Consent & Drug Recognition Evaluations

The Drug Recognition Evaluation (D.R.E.) is a protocol developed by the Los Angeles Police Department in the 1970s in order to help police spot drivers impaired by drugs, rather than alcohol. It has been widely used in some U.S. states for many years, but is relatively new to Canada.

As it stands now, some Canadian police forces (including the Edmonton Police Service) have officers trained in the D.R.E. protocol. These officers refer to themselves as Drug Recognition Experts. In a case where impaired driving is suspected, and alcohol has been ruled out as the agent of impairment, the police will frequently call in one of the officers trained in the D.R.E. This officer will attempt to get the suspect to participate in this exam, which involves everything from the taking of blood pressure, to eye examinations, to balance tests, to the collection of urine samples. Following the exam, the officer will then form an opinion as to whether the suspect is impaired, and if so by what class, or classes, of drugs.

There is nothing compelling an individual to participate in this exam. The *Charter of Rights and Freedoms* attempts to protect Canadians from being conscripted against themselves unless they do so with fully informed consent. However, as there is nothing legally compelling a person to participate in the D.R.E., a police officer who wants to administer the exam may attempt to technically comply with Informed Consent requirements, while at the same time trying to present the D.R.E. as something which cannot be refused. Individuals may not be explicitly told that the results of the D.R.E., and the officer's opinion, could be used in court against them.

It is important that individuals understand that they have the right to refuse to participate in the D.R.E. In fact, it is in an individual's interest to refuse to participate. Serious scientific study has found the D.R.E., while based on sound science, is actually quite unreliable in practice. For example, a study entitled "Laboratory Study of Drug Recognition Evaluation and Classification Program: Ethanol, Cocaine, and Marijuana" which appeared in the Journal of Analytical Toxicology in the October 1996 issue found that, when ethanol was excluded, the opinions of the Drug Recognition Examiners were consistent with toxicology in only 44% of cases. A later study, "Laboratory Study of Drug Recognition Evaluation and Classification Program: Alprazolam, *d*-Amphetamine, Codeine, and Marijuana" which appeared in the October 1998 edition of the Journal of Analytical Toxicology found that the opinions of the Drug Recognition Examiners as to agent of impairment were consistent with toxicology in only 32% of cases.

Legislation is currently before Parliament which would make participation in the D.R.E. mandatory (see [http://www.justice.gc.ca/en/news/fs/2004/doc\\_31164.html](http://www.justice.gc.ca/en/news/fs/2004/doc_31164.html)). However, unless and until this legislation is enacted into law, Canadians are fully entitled to refuse to participate in the D.R.E. Given the demonstrated unreliability of the D.R.E., it would be in an individual's best interest to refuse it.

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