

## **IMPAIRED DRIVING - 254(2) CC - CONSTITUTIONAL VALIDITY**

**R. v. McCargar** - Nov. 1, 2007 ABPC  
302 per Tilley, PCJ:

Accused charged with refusal to provide a screening sample. Issue regarding constitutional validity of ss. 254(2), 254(5) and 255(1). Legislation alleged to violate ss. 7, 8, 9, 10 and 12 of the Charter.

**Held: Legislation constitutional.**

Although s. 254(2) CC authorizes the seizure of breath in the absence of reasonable and probable (i.e. lower than the *Hunter v. Southam* standard), and in the absence of the right of counsel, the legislative scheme has been upheld under s. 1 by the Supreme Court in *Thomsen* (1988), 40 CCC (3d) 411 (SCC). “It appears that the constitutionality of ss. 254(2) and the punishment for a refusal to provide a roadside breath sample, as contemplated under s. 254(2) and s. 255(1) of the Code, has been canvassed, either directly or by implication, in a number of Supreme Court of Canada, and Court of Appeal cases.” Authorities reviewed.