

IMPAIRED DRIVING - 10(B) - SCREENING TEST - DELAY

R. v. Harper - Nov. 20, 2007 ABPC
330 per Van de Veen, PCJ:

“The issue before me is whether the section 10(b) Charter right to counsel must be given to an accused immediately after a demand for a roadside sample pursuant to s. 254(2), in circumstances where the officer is required to wait 15 minutes before administering the test in order to ensure the accused’s breath sample is not contaminated.”

Held: No 10(b) breach.

The 15 minute delay was to ensure that the sample was not contaminated (i.e. for the accused’s benefit). The informational and implementational components of 10(b) cannot be accomplished at the roadside, nor could they be accomplished in 15 minutes. If any 10(b) obligations arose, the failure to afford the right at the roadside was saved by s. 1.