

HARPER GREY LLP  
3200 – 650 West Georgia Street  
Vancouver, British Columbia, V6B  
4P7  
Canada

Tel: 604 687 0411  
Fax: 604 669 9385

## LAWSUIT LAUNCHED AGAINST POLICE FOR IMPROPERLY CHARGING DRIVERS UNDER BC'S NEW IMPAIRED DRIVING LAW

May 16, 2011

*STATUS UPDATE—May 16, 2011. The class action lawsuit regarding alleged improper programming of breathalyser tests administered between September 20, 2010 and November 19, 2010 is still pending certification from the Supreme Court of British Columbia. We will notify clients and others interested as soon as we receive a decision from the courts.*

*You are welcome to contact the lawyers handling this case with any questions. Please scroll to the bottom of this page for their information.*

---

### MARCH 4, 2011

**Vancouver, BC—** A representative plaintiff has [filed a class action lawsuit](#) claiming that police were negligent in their investigations under the province's impaired driving legislation that came into force on September 20, 2010.

The legislation states that if an approved screening device measures a blood alcohol content of .05 mg percent or higher it should display a "warn" signal. A driver who produces a "warn" is subject to an immediate driving prohibition, a significant fine and vehicle impoundment.

The lawsuit alleges that the police used improperly programmed approved screening devices (handheld breathalysers) such that drivers may have been charged under the new legislation when their blood alcohol levels were below .05 mg percent. The lawsuit does not challenge the validity of the impaired driving legislation. Rather, it is focused on the alleged deficiencies of the police in investigating and enforcing the legislation.

On November 19, 2010, the police [notified the public](#) that there was a problem with the approved screening devices such that the approved screening devices could register a "warn" when the driver's actual blood alcohol content was lower than the .05 mg percent limit set by the new legislation. The police stopped using the approved screening devices until they could be reset to ensure, in the words of Victoria Police Department Chief Jamie Graham, that "anyone who now gets a warning signal from the device is actually in violation of the provincial law".

If the lawsuit is certified as a class action, it will provide drivers who registered a "warn" between September 20, 2010 and November 19, 2010 with an opportunity to quash driving prohibitions improperly issued to them and to recover compensation for fines and vehicle impoundment charges that were inappropriately paid.

“The lawsuit is important, since the new driving legislation requires the public to place greater reliance on the police to properly investigate potential infractions and to stay within the bounds of the authority provided to them”, say Michael Thomas and Bernard Buettner, the lawyers representing the plaintiff. They add “In January, the municipalities responsible for policing the legislation were advised of our intention to file this action. Although the government has announced that they will consider reviewing the legislation to provide an appeal process there is no indication that people affected by the alleged negligence of the police will have their driving prohibitions quashed, fines refunded or receive compensation for towing or impounding fees.”

Harper Grey LLP is a Vancouver law firm established in 1907 that focuses on litigation and dispute resolution. The firm has represented clients in some of the highest profile and groundbreaking cases in the province.

**Contacts:**

[Michael Thomas](#)  
Barrister & Solicitor  
Harper Grey LLP  
Telephone: 604 895 2873  
Email: [Mike Thomas](#)