Sahaluk v Alberta: The Right to a Fair Trial, Impaired

Alberta's administrative license suspension program immediately suspends the driver's license of those individuals charged with an alcohol-related driving offence under the *Criminal Code*.[1] In May 2017, the majority of the Alberta Court of Appeal in *Sahaluk v Alberta (Transportation Safety Board)* found that this program is unconstitutional because it violates the *Canadian Charter of Rights and Freedoms*, specifically, the right to liberty in section 7 and the right to be presumed innocent until proven guilty in section 11(d).[2]

Alberta's administrative license suspension program

In Alberta, individuals that are charged with an alcohol-related driving offence under the *Criminal Code* face an immediate license suspension that continues until the criminal charge is resolved, whether that is through a guilty plea or following the end of a trial. People found guilty of or who plead guilty to the criminal offence face a mandatory one-year license suspension.[3] During that period, they can apply (if eligible) to drive with an ignition interlock device, which prevents a vehicle from starting unless the driver provides a suitable breath sample.[4]

Statistics show that the average time between the date of the offence and a scheduled trial date for cases to that point was over nine months.[5] One problem arising was that, for an accused person, immediately pleading guilty shortened the suspension by an average of about seven months.[6] In addition, about 20% of those charged were ultimately found not guilty; however, they still lost the ability to drive while awaiting trial.[7]

Although the administrative license suspension program allows drivers to appeal their suspension to the Alberta Transportation Safety Board, this only happens in limited circumstances.[8] The Board can only set aside a suspension if it determines that the accused did not commit the offence on a balance of probabilities.[9] A large number of appeals do not get heard by the Board.[10] Of those heard, only one-third were successful.[11]

The effect of the program on the right to be presumed innocent

Section 11(d) of the *Charter* guarantees that any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing.[12] The majority in *Sahaluk* concluded that the administrative license suspension program offends this right in several ways:[13]

- The punishment (the suspension) is imposed immediately following a

criminal charge, before the guilt of the driver is proven at trial.[14] In criminal law, the accused has a right to a fair trial. The onus is on the Crown to prove the accused committed the criminal offence. [15] Any punishment received occurs *after* a guilty verdict is reached.[16] In the case of the suspension, however, the punishment occurs *before* the accused person's trial.

- Those who are eventually found not guilty still suffer a lengthy suspension during the time they wait for their trial date.[17]
- Further, the program encourages people to give up their right a fair trial because losing at trial results in a longer overall suspension compared to pleading guilty at the earliest possible date.[18] In other words, it encourages people to plead guilty to avoid a longer suspension.

The program's impact on the right to liberty

The majority of the Court compared the immediate suspension of a person's driver's license to a restriction on free movement. They concluded that the suspension limits the accused's section 7 *Charter* right to liberty. While driving a vehicle is not in and of itself a liberty interest, the majority noted that being punished for one's conduct in a context that is closely tied to the criminal prosecution does engage the protected liberty interests in the *Charter*.[19]

The majority's conclusion that the program violated section 7 of the *Charter* was closely connected to the fact that it offends the presumption of innocence.[20] The reach of the program also goes too far in trying to achieve public safety because it punishes *everybody*, regardless of whether they are innocent or a danger to public.[21]

Further, the measures taken to achieve the objectives of the program were grossly disproportionate.[22] The length of the suspension before trial varies for reasons that have nothing to do with traffic safety or the blameworthiness of the driver.[23] Immediately suspending the licenses of everyone charged as if they are or will become repeat offenders is excessive because the suspension's increased effect on deterrence is not significant.[24]

Result

In this case, the administrative license suspension regime's violation of the *Charter* rights is clear, broad, and harmful.[25] As the program could not be justified, the majority concluded that the administrative license suspension program is unconstitutional. However, the Court issued a suspended declaration which means that, though the law is unconstitutional the province is given one year to fix it.[26] Meanwhile the law is temporarily still valid until the one-year period expires.

As of June 26, 2017, there has been no appeal filed to the Supreme Court of Canada.

This article was written by a law student for the general public.

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[1] *Sahaluk v Alberta (Transportation Safety Board)*, 2017 ABCA 153 at para 1.

[2] *Ibid* at paras 78-81.

[3] *Ibid* at para 12.

[4] *Ibid* at para 13.

[5] *Ibid* at para 30.

[6] *Ibid* at para 48.

[7] *Ibid* at para 2.

[8] *Ibid* at paras 39-44.

[9] *Ibid* at para 40.

[10] *Ibid* at para 44

[11] *Ibid*.

[12] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11, s 11(d).

[13] *Sahaluk*, *supra* note 1 at para 99.

[14] *Ibid*.

[15] *Ibid* at para 81.

[16] *Ibid*.

[17] *Ibid*.

[18] *Ibid* at paras 99-100.

[19] *Ibid* at paras 94, 111-112.

[20] *Ibid* at paras 79, 115.

[21] *Ibid* at paras 122, 129.

[22] *Ibid* at paras 132-34

[23] *Ibid* at para 132.

[24] *Ibid* at para 133.

[25] *Ibid* at para 3.

[26] *Ibid* at para 151.