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BREATHALYZER LAW IN CANADA

McLeod, Takach & Segal
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This practice-oriented service provides subscribers with quick, up-to-date answers to procedural and substantive questions related to drinking and driving offences. Three volumes furnish all the information needed to advise, defend, and prosecute individuals charged with the offences of impaired driving, a reframed driving "over 80" to within two hours after ceasing to operate a conveyance, a blood alcohol concentration that is equal to or exceeds 80, and failing or refusing to comply with demands for samples.

What's New in this Update:

This release contains updates to Chapter 1 (The Offence of Impaired Operation (Driving or Care or Control)), Chapter 2 (The Offence of Having, Within 2 Hours of Ceasing to Operate a Conveyance, 80 or More mg of Alcohol in 100 ml of B1), Chapter 4 (Screening Demands -- Alcohol and Drugs), Chapter 6 (Failing or Refusing to Comply) and Appendix U (Licence Suspension Provisions).

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Highlights

- **The Offence of Impaired Operation (Driving or Care or Control)—Impaired Operation Causing Death: Sentencing**—The Superior Court of Justice dismissed the accused’s appeal, after having declined a request to receive, as fresh evidence, an accident reconstruction report that could have been prepared for and presented at the time of trial: *R. v. Hyde*, 2024 ONCA 659, 2024 CarswellOnt 13304 (Ont. S.C.).
- **Failing or Refusing to Comply—“Fails or Refuses”—Roadside Demands**—The Court of Appeal for Ontario held the “same transaction” principle in breathalyzer cases also to apply in cases involving the refusal of ASD demands – if the accused’s change of mind after the initial refusal were to take place with sufficient time for the officer to obtain a breath sample “immediately”, then this would lead to the conclusion that the actus reus of the refusal offence was not established: *R. v. Khandakar*, 2024 ONCA 620, 2024 CarswellOnt 12405 (Ont. C.A.).