Publisher's Note

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BREATHALYZER LAW IN CANADA

McLeod, Takach & Segal Release No. 11, November 2025

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 Blood), Chapter 4 (Screening Demands—Alcohol and Drugs), Chapter 6 (Failing or Refusing to Comply) and Chapter 10 (Presumption Regarding: Breath Samples; Blood Samples; Type of Drug).

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Highlights

- The Offence of Impaired Operation (Driving or Care or Control) —The Ingredients of the Offence—The accused, who had appeared very unwell while driving a pickup truck towing a trailer, drove extremely erratically, crossed the centre line of the Trans-Canada Highway and collided head-on with the deceased's oncoming vehicle. Two empty cans of hard seltzer and a vodka bottle missing a quarter of its contents were found in the vehicle, along with other unopened cans and wine bottles. His BAC was found to be 213-239. The court accepted the accused's glucose level at the time was 9.3 but rejected the accused's claim that he had been so unwell as to fail to appreciate that he had been drinking the vodka and hard seltzer. Underlying this conclusion, the court found the intelligent and remorseful accused to be a 20-year sufferer of diabetes, who had been hospitalized for earlier diabetic crises that resulted in his use of longer-lasting insulin and medication - he was well aware of the dangers of low blood glucose, and he had not eaten for several hours around the time he had drunk the alcohol while feeling unwell. Consequently the court convicted the accused: R. v. Rumbles, 2024 BCSC 2128, 2024 CarswellBC 3438 (B.C. S.C.).
- The Offence of Having, within 2 Hours of Ceasing to Operate a Conveyance, 80 or more mg of Alcohol in 100 ml of Blood—Technical Errors—At the trial of the accused on the charge of "over 80", the Crown tendered as two discrete exhibits the Approved Instrument Printout and the Intox EC/IR II Subject Test. The trial judge held them to be inadmissible since the two documents were not "attached" and dismissed the charge. The Court of King's Bench allowed the Crown's appeal and substituted a verdict of guilty, after an examination of the context revealed circumstantial evidence relating the two documents with each other. According to the court, applying such a strict approach, as to require physical attachment of the two documents, would only make sense if there were an ambiguity, and no ambiguity had existed to show the documents had been disclosed improperly: In *R. v. Oliphant*, 2025 SKKB 4, 2025 CarswellSask 10, 570 C.R.R. (2d) 154 (Sask. K.B.).