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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 3 (Offences Under Sections 320.14(1)(c), 320.14(1)(d) and 320.14(4)), Chapter 4 (Screening Demands -- Alcohol and Drugs), Chapter 5 (Breath, Blood, and Evaluation Demands), Chapter 6 (Failing or Refusing to Comply), Chapter 7 (Warrant to Obtain Blood Samples), Chapter 8 (The Presumption of Operation), and Chapter 10 (Presumption Regarding Breath Samples Blood Samples Type of Drug).

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Highlights

- **Screening Demands: Alcohol and Drugs — Introduction —** The first officer was tasked with managing the scene of a collision and collecting preliminary information, while awaiting the arrival of a Traffic Services officer to lead the investigation. During the ten minutes prior to the arrival of Traffic Services, the first officer spoke with the accused, whom he had then begun to suspect was one of the drivers. However, only upon seeing the Traffic Services officer arrest the accused did he form the suspicion that the accused had alcohol in his system while driving at the time of the collision. Before the Summary Conviction Appeals Court, the accused argued that the breath demand made by the Traffic Services officer was not valid under s. 320.27(1) of the *Criminal Code* because of the ten-minute delay, and that the first officer had failed to make an immediate roadside demand earlier. The court accepted that the first officer had no subjective belief in reasonable grounds to make a breath demand prior to the involvement of the Traffic Services officer, and upheld the validity of the Traffic Services officer's demand by finding that it had been made immediately. Further, the court found the accused not to have been detained during the ten-minute period prior to the Traffic Service's demand. Consequently, the court dismissed the accused's appeal: *R. v. Franco*, 2024 ONSC 2444, 2024 CarswellOnt 12034 (Ont. S.C.).
- **The Presumption of Operation — “That They Did Not Occupy that Seat or Position for the Purpose of Setting the Conveyance in Motion” Cases where the Accused Succeeded —** The accused claimed that, after having consumed alcohol, his intention was to walk home instead of driving his car, but, upon being struck by intense nausea, he rested in the driver's seat of his vehicle. His friend found him there, with the vehicle's door open, his legs outside the vehicle, and his vomit on the ground. The accused gave his car keys to his friend. After a trial for impaired driving and “over 80”, the court accepted the accused's evidence, found no realistic risk of the accused putting the vehicle in motion, and held the presumption of the accused's care or control of the vehicle to have been successfully rebutted: *R. v. Hansen*, 2024 SKPC 27, 2024 CarswellSask 303 (Sask. Prov. Ct.).