

# Index

## **“80 AND OVER”**

- Disclosure, **9:4**
- Documentary proof, **9:3**
- Evidentiary value, **9:2**
- Offence, **9:1**

## **ABUSE OF PROCESS**

- Defence, as, **15:13**

## **ACCIDENT REPORT**

- Preparation of case, **3:8**

## **ADMISSIONS**

- Driving, **10:1**
- Impairment, **10:1**
- Operation, **10:1**

## **ALCOHOL AND DRUGS**

- Care or control, **9:6**
- Documentary proof, **9:8**
- Evidentiary value, **9:7**
- Post-event consumption, **11:1**

## **ALCOHOL INFLUENCE REPORT**

- See Appendix G

## **APPROVED SCREENING DEVICE (A.S.D.)**

- See also REFUSAL OR FAILURE
- Calibration, proper, **4:9**
- Counsel, right to, **4:6, 4:16**
- Demand, roadside, **4:4**
- Exclusion of evidence, **4:17**
- Fail, **4:13**
- Failure, **4:13**
- Immediately, **4:5, 4:15**
- Machine, proper, **4:8**
- Mandatory, **4:1**
- Operation, proper, **4:10**
- Outcome of test, **4:11**
- Pass, **4:11**
- Physical coordination tests, **4:14**
- Questioning, roadside, **4:3**
- Reasonable suspicion of alcohol/drug in body, **4:2**
- Testing, roadside, **4:3**
- Testing the device, **4:7**

## **APPROVED SCREENING DEVICE (A.S.D.)—Cont’d**

- Warn, **4:12**

## **ARREST, UNLAWFUL**

- See also UNLAWFUL DETENTIONS,  
ARRESTS AND SEARCHES
- Defence, as, **15:1**

## **AS SOON AS PRACTICABLE**

- Blood tests, **6:3**
- Breathalyzer, **5:2**
- Drug evaluations, **7:2**
- Improper breath tests, **15:6**

## **BASE RATE FALLACY**

- Drug evaluations, **7:5**

## **BLOOD ALCOHOL**

- Blood test readings, **8:17**
  - see also BLOOD TESTS
- Breathalyzer readings, **8:16**
  - see also BREATHALYZER
- Content report—see Appendix H
- Excessive levels—see “80 AND OVER”
- Readings, **8:15**

## **BLOOD TESTS**

- See also REFUSAL OR FAILURE
- As soon as practicable, **6:3**
- Counsel, right to, **6:4**
- Demand, proper, **6:3**
- Documentary proof, **6:7**
- Evidentiary value, **6:6**
- Reasonable grounds, **6:1**
- Warrants to obtain samples, **6:5**

## **BREATHALYZER**

- See also REFUSAL OR FAILURE
- As soon as practicable, **5:2**
- Counsel, right to, **5:3**
  - see also COUNSEL, RIGHT TO
- Criminal Code, new Part VIII.1 provisions under, **5:3**
  - see also Appendix C
- Disclosure, **5:6**
- Documentary proof, **5:5**

**BREATHALYZER—Cont'd**

Effect of blood alcohol level, **8:16**  
 Evidence, exclusion of, **5:3**  
 Evidentiary value, **5:4**  
 Expert evidence, **8:16**  
 Improper tests, **15:6**  
 Material time, **8:16**  
 Presumptions, **8:16**  
 Readings, **8:16**  
 Reasonable grounds, **5:1**  
 Service re certificate, **8:16**

**CARE OR CONTROL**

“80 and over,” **9:1**  
 Generally, **9:1 et seq.**  
 Alcohol, **9:6**  
 Criminal Code, new Part VIII.1 provisions under, **9:9**  
 Disclosure, **9:4**  
 Documentary proof, **9:3**  
 Driving, **10:5**  
     see also OPERATION  
 Drugs, **9:5, 9:6**  
 Evidentiary value, **9:2**  
 Low blood drug concentration, **9:9**  
 Operation, **10:5**  
     see also OPERATION

**CERTIFICATES**

See also Appendix E  
 Evidence re breathalyzer readings, **8:16**  
 Service re breathalyzer readings, **8:16**

**CHARGES**

See also Appendix F  
 Preparation of case, **3:5**

**CHARTER OF RIGHTS AND FREEDOMS**

See CONSTITUTIONAL ISSUES

**CONSTITUTIONAL ISSUES**

Generally, **15:1 et seq.**  
 Abuse of process, **15:13**  
 Arrest, unlawful, **15:1, 15:10, 15:11**  
 Detention, unlawful, **15:1, 15:10, 15:11**  
     see also DETENTION  
 Disclosure—see DISCLOSURE  
 Minimum sentences, **15:16**  
 Reasons for detention, **15:10**  
 Search, unlawful, **15:1**  
 Trial procedures, **15:14**

**CONTROL**

See CARE OR CONTROL

**COUNSEL, RIGHT TO**

Approved screening device, involving, **4:6**  
 Blood tests, **6:4**  
 Breathalyzer issues generally, **5:3**  
 Drug evaluations, **7:3**  
 Generally re breathalyzer tests, **5:3**  
 Physical coordination tests, involving, **4:6, 4:16**

**CRIMINAL CODE—NEW PART VIII.1**

“80 and over,” **9:1**  
 Care or control, **10:5**  
 Driving prohibition orders under, **13:10**  
 Impairment, **8:18**  
 Sentencing, **13:1 et seq.**  
 Written expert evidence, **14:1**

**DEATH, CAUSING**

See BODILY HARM OR DEATH, CAUSING

**DEFENCES**

See also EXPERT EVIDENCE  
 Abuse of process, **15:13**  
 Charter issues generally, **15:1 et seq.**  
     see CONSTITUTIONAL ISSUES  
 Detention—see DETENTION  
 Disclosure—see DISCLOSURE  
 Trial procedures, **15:14**

**DEMAND**

See also REFUSAL OR FAILURE  
 Blood tests, **6:3**

**DETENTION**

See also UNLAWFUL DETENTIONS, ARRESTS AND SEARCHES  
 Arbitrary, **15:11**  
 Reasons for, **15:10**  
 Unlawful generally, **15:1**

**DISCLOSURE**

“80 and over,” **9:4**  
 Breathalyzer, **5:6**  
 Drug evaluations, **7:7**  
 Preparation of case, re, **3:6**  
 Request for—see Appendix B

**DRIVER RECORD**

Preparation of case, **3:7**

## INDEX

### **DRIVER RECORD—Cont'd**

Search—see Appendix I

### **DRIVING**

See also CARE OR CONTROL; OPERATION

Generally, **10:5**

### **DRUG EVALUATIONS**

See also REFUSAL OR FAILURE

As soon as practicable, **7:2**

Base rate fallacy, **7:5**

Conduct of, **7:4**

Counsel, right to, **7:3**

Disclosure, **7:7**

Evidentiary value, **7:6**

Reasonable grounds, **7:1**

### **DRUGS**

See ALCOHOL AND DRUGS

### **EVIDENCE**

Certificate re breathalyzer, **8:16**

Drug evaluations, value re, **7:6**

Expert, written, **14:1**

see also EXPERT EVIDENCE

Expert testimony—see EXPERT EVIDENCE

Impairment, symptoms of, **8:11**

Physical symptoms, **8:11**

Police, **8:11**

Value of, **5:4**

### **EXCESSIVE BLOOD ALCOHOL LEVEL**

See “80 AND OVER”

### **EXPERT EVIDENCE**

Blood tests, **8:17**

Breathalyzer, **8:16**

Testimony, **8:16, 8:17**

Toxicologist, report of, **3:4**

Written, **14:1**

### **FAILURE**

See REFUSAL OR FAILURE

### **IMMEDIATELY**

Testing, **4:15**

### **IMPAIRMENT, PROOF OF**

Accident, **8:4**

Admission, **8:2**

Blood alcohol readings, **8:15**

see also BLOOD ALCOHOL

### **IMPAIRMENT, PROOF OF—Cont'd**

Blood test readings, **8:17**

see also BLOOD TESTS

Breathalyzer readings, **8:16**

see also BREATHALYZER

Driving, nature of, **8:3**

Drug, **8:18**

Opinions, **8:13**

Questioning, roadside, **4:3**

Roadside testing, **4:3**

Symptoms, physical, **8:5**

see also SYMPTOMS OF IMPAIRMENT

Tests, physical, **4:3, 8:12**

Videotapes, **8:14**

### **IMPRISONMENT**

Bodily harm, where, **13:5**

Death, where, **13:6**

### **INFORMATION TO OBTAIN (I.T.O.)**

Initial interview, **2:2**

### **INTERVIEW, INITIAL**

Generally, **2:1**

Documents, **2:3**

Information to obtain (I.T.O.), **2:2**

Obligations, future, **2:4**

Record of information from—see Appendix A

### **INTOXILYZER**

See BREATHALYZER

### **LICENCE SUSPENSIONS**

Alberta—see Appendix D

British Columbia—see Appendix D

Ontario—see Appendix D

### **LICENSE PROHIBITION ORDERS**

Generally, **13:10**

Criminal Code, under, **13:10**

Ignition interlock devices, **13:12**

Stays pending appeal, **13:11**

### **LOW BLOOD DRUG CONCENTRATION**

Offence, **9:9**

### **MANDATORY PROHIBITION ORDERS**

See LICENSE PROHIBITION ORDERS

### **MATERIAL TIME**

Blood test, **8:17**

**MATERIAL TIME—Cont'd**

Breathalyzer, **8:16**  
 Impairment, **8:15 to 8:17**

**NOTICE**

See Appendix E

**OPERATION, PROOF OF**

Admissions, **10:1**  
 Care or control, **10:5**  
     see also CARE OR CONTROL  
 Circumstantial evidence, **10:4**  
 Ownership, **10:3**  
 Witnesses, **10:2**

**OWNERSHIP**

Operation, **10:3**

**PHYSICAL COORDINATION TESTS**

(4)

Conducting, **4:14**  
 Counsel, right to, **4:6, 4:16**  
 Demand, **4:4**  
 Exclusion of evidence, **4:17**  
 Failure, **4:3**  
 Immediately, **4:5, 4:15**  
 Questioning, roadside, **4:3**  
 Reasonable suspicion of alcohol/drug in  
     body, **4:2**  
 Testing, roadside, **4:3**

**POLICE**

Conversation with, **1:14**  
 Evidence re symptoms of impairment,  
     **8:11**  
 Opinions of officers, **8:13**

**POST-EVENT CONSUMPTION**

Generally, **11:1**

**POST-TEST ARBITRARY DECISION**

Generally, **15:11**  
 Exclusion of test result, **15:12**  
 Stay, **15:11**

**PREPARATION**

Generally, **3:9**  
 Accident report, **3:8**  
 Charges, **3:5**  
 Counsel, opposing, **3:3**  
 Disclosure, **3:6**  
 Documents, **3:1**  
 Driving record, **3:7**  
 Offence, elements of, **3:10**

**PREPARATION—Cont'd**

Toxicologist's report, **3:4**  
 Witnesses, **3:2**

**PRESUMPTIONS**

Blood test readings, using, **8:17**  
 Breathalyzer readings, using, **8:16**  
 Methods of using blood alcohol readings,  
     **8:16, 8:17**

**PROHIBITION ORDERS**

See LICENSE PROHIBITION ORDERS

**REASONABLE**

Approved screening device, suspicions  
     for, **4:2**  
 Blood test, grounds for, **6:1**  
 Breathalyzer, grounds for, **5:1**  
 Drug evaluation, grounds for, **7:1**  
 Physical coordination tests, suspicions  
     for, **4:2**  
 Probable grounds, and, **1:8**  
 Suspicion of alcohol/drug in the body, **4:2**

**REFUSAL OR FAILURE**

Blow to, **1:9**  
 Charter exclusion, **12:5**  
 Defences, **12:3**  
 "Last chance," **12:6**  
 Mens rea, **12:2**  
 Physical co-ordination tests, **4:6**  
 Reasonable excuse, **12:4**  
 Section 320.15, **12:1**

**REGULATIONS**

See also Appendix C  
 Conduct review programs (Ontario)—see  
     Appendix D

**ROADSIDE**

Questioning, **4:3**  
 Testing, **4:3**

**SEARCH**

See also UNLAWFUL DETENTIONS,  
     ARRESTS AND SEARCHES  
 Driver record—see Appendix I  
 Unlawful, **15:1**

**SENTENCING**

Aggravating circumstances, **13:7**  
 Appeal, stay pending, **13:11**  
 Bodily harm, where, **13:5**  
 Death, **13:6**

## INDEX

### SENTENCING—Cont'd

- Delay of, **13:9**
- High blood alcohol concentration, **13:2**
- Ignition interlock device programs, **13:12**
- Low blood drug concentration, **13:4**
- Mandatory prohibition orders, **13:10**
- Penalties, basic, **13:1**
- Precedents, **13:13**
- Prohibition orders generally, **13:10**
- Refusal, **13:3**
- Second offence, **13:8**
- Stay pending appeal, **13:11**
- Subsequent offences, **13:8**
- Treatment, delay for, **13:9**

### STATUTES

- Criminal Code, alcohol and drugs, **9:6**
- Criminal Code, “80 and over,” **9:1, 9:9**
- Criminal Code, breathalyzer tests, **5:1 et seq.**
- Criminal Code, driving prohibition orders under, **13:10**
- Criminal Code, drugs, **9:6**
- Criminal Code, low blood drug concentration, **9:9**
- Criminal Code, proof re care or control, **9:3**
- Criminal Code, sentencing, **13:1 et seq.**
- Criminal Code, written expert evidence, **14:1**
- Highway Traffic Act (Ontario)—see Appendix D
- Motor Vehicle Act (British Columbia)—see Appendix D
- Traffic Safety Act (Alberta)—see Appendix D

### STAYS OF PROCEEDINGS

- Pending appeal, **13:11**

### SYMPTOMS OF IMPAIRMENT

- Generally, **8:5**
- Balance, lack of, **8:9**
- Bloodshot eyes, **8:6**
- Evidence, police, **8:11**
- Eyes, bloodshot/watery, **8:6**
- Flushed face, **8:6**
- Odour of alcohol, **8:8**
- Speech, slurred, **8:10**
- Unsteady on feet, **8:9**
- Watery eyes, **8:6**

### TELEPHONE CALL, THE INITIAL

- Advice generally, **1:6**
- Client's notes, **1:13**
- Information, initial, **1:5**
- Intoxication, signs of, **1:11**
- Note-taking, **1:3, 1:13**
- Police, communication with, **1:14**
- Post-release, **1:12**
- Privacy, **1:4**
- Reasonable and probable grounds, **1:8**
- Refusal to blow, **1:9**
- Release, **1:12**
- Signs of intoxication, **1:11**
- Structuring, **1:2**
- Testing, right to refuse, **1:7**
- Three-hour limit, **1:8**

### TOXICOLOGIST

- Preparation of case, **3:4**

### TRIAL PROCEDURES

- Generally, **15:14**
- Charter application, **15:14**
- Stay, **15:11**

### UNLAWFUL DETENTIONS ARRESTS AND SEARCHES

- “As soon as practicable,” **15:6**
- Exclusion of evidence, **15:9**
- Improper breath tests, **15:6**
- Improper detention, **15:3**
- Improper handcuffing, **15:2**
- Improper pat-down search, **15:1**
- Improper search, **15:7**
- Improper videotaping, **15:8**
- Unlawful arrest, **15:5**
- Unnecessary arrest, **15:4**

### VIDEO EVIDENCE

- Impairment, proof of, **8:14**

### WARNING

- Approved screening device, **4:12**

### WARRANTS

- Blood samples, to obtain, **6:5**

### WITNESSES

- Driving, **10:2**
- Expert—see EXPERT EVIDENCE
- Interviewing, **3:2**
- Operation, **10:2**
- Opinions of, **8:13**

DEFENDING DRINKING, DRUGS AND DRIVING CASES 2024

**WITNESSES—Cont'd**  
Police, **8:13**

**WITNESSES—Cont'd**  
Preparation of case, **3:2**