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**A Guide to  
BREATHALYZER CERTIFICATES  
IN CANADA**

**Alan Pearse  
Release No. 2022-2, April 2022**

**What's New in this Update:**

This release features updates to the case law and commentary in Chapters 2 (Charter Section 9: Stopping the Accused), 4 (Screening Demands), 5 (Reasonable and Probable Grounds), 6 (As Soon as Practicable and "Hard" Time Requirements), and 7 (Charter Section 10(b): Right to Counsel).

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## Highlights

**Charter Section 10(b): Right to Counsel — Case Law — Reasonable Diligence — Superior/Provincial Court** — Two officers randomly stopped the accused while conducting RIDE checks in Hamilton, Ontario. While speaking with the accused, one of the officers detected an odour of alcohol, and the accused also admitted to having consumed alcohol. Instead of making an Approved Screening Device demand or a demand to perform physical coordination tests, the officer continued to ask the accused additional questions and then had him pull his vehicle over to the side of the road and exit the vehicle. Twenty minutes elapsed between the accused's admission to having consumed alcohol and his arrest for impaired operation, and the officer did not read the accused's right to counsel until five minutes after that. Although the officer testified that he had read a demand to provide breath samples into an approved instrument, the accused testified that this did not take place — the only breath demand read to the accused was by the qualified breath technician at the police station. The court reasoned the suspensions of Charter rights triggered by random roadside RIDE stops may be justified under s. 1, provided the police minimize the duration and ensure that the rights of drivers are infringed as little as possible. In this instance, the court held the officers' failure to conduct a focused and brief investigation to have undermined justification of the arbitrary detention of the accused and deprivation of his right to counsel. Although the officer claimed to have been forming grounds after having smelled alcohol and having heard the accused's admission, the officer could not establish that they had taken reasonable investigative steps with dispatch during those 20 minutes. The court also accepted the accused's testimony that no breath demand had been made at the roadside by the officers, and held, in addition to the ss. 9 and 10(b) Charter breaches, his s. 8 rights to have been violated by the officers' failure to make a breath demand "as soon as practicable": *R. v. Najeve*, 2021 ONCJ 427, 2021 CarswellOnt 11671 (Ont. C.J.).