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<p><b>A Guide to BREATHALYZER CERTIFICATES IN CANADA</b> Alan Pearse Release No. 1, May 2025</p>
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**What’s New in This Update**

This release features to the updates in Chapters 3(Informed of Reasons for Detention), 4(Screening Demands), 6(As Soon As Practicable and “Hard” Time Requirements), 7(Right to Counsel).

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## Highlights

All parties will want to review *R. v. Kluz*, 2025 SKKB 9, 2025 CarswellSask 18 (Sask. K.B.) . On June 23, 2023 the police initiated a traffic stop on the accused after observing what they thought to be erratic driving. A mandatory alcohol screening demand was given to the accused at 8:56 AM. The accused failed the test at approximately 9 AM. The officer formally arrested the accused at 9:04 AM and read him his right to counsel, the approved instrument breath demand and the police warning. The officer immediately called for a second officer to attend at the scene to secure the accused's vehicle. After the second officer arrived at the scene, the first officer departed the scene at 9:19 AM. The accused and the arresting officer arrived at the police detachment at 9:23 AM. The accused was provided an opportunity to contact counsel and the first observation period began at 10:01 AM. While waiting for the second officer to arrive at the scene between 9:04 AM and 9:19 AM, the arresting officer searched the accused's vehicle for alcohol to support his investigation, remove the accused's medications and discovered a firearm in the vehicle and secure the firearm and placed it in the police vehicle. Upon being told of two more firearms in the vehicle, the officer went back to the accused's vehicle and secured both. The constable then briefed his colleague. There was no evidence that the firearms were illegally stored or possessed by the accused. At trial, the accused took the position that the breath samples were not taken as soon as practicable because of the delay between the MAS fail at 9 AM and the departure from the scene after the second officer arrived at 9:19 AM. In particular, the accused argued that waiting for the second officer was unnecessary, and therefore the alcohol screening could have been done earlier. CC 320.28(1) requires that police perform two tasks "as soon as practicable." First of all, they must make a demand on the accused for a breath sample. Secondly, they must obtain this breath sample. In this appeal, no issue was taken with the officer making the breath demand as soon as practicable. The issue was whether the breath samples were taken as soon as practicable. The phrase "as soon as practical" is not synonymous with as soon as possible, and is also not synonymous with the term "forthwith." The "as soon as practicable" standard requires that breath samples be taken within a reasonably prompt time in the circumstances. The test is grounded in common sense. The touchstone for determining whether breath samples were taken as soon as practicable is whether the police acted reasonably. The crown does not need to prove a detailed explanation of what occurred during every minute that the accused was detained. A delay caused by waiting for a tow truck does not necessarily create a situation where the sample was not taken as soon as practicable. The trial judge also considered the effect of the *Saskatchewan Traffic Safety Act*. The trial judge noted that the delay started with the demanding officer contacting another police officer to take charge of the vehicle

being driven by the accused. The police stated that this was done to ensure that the accused's property was taken care of properly, and so there would be no delay in continuing the investigation. The trial judge also noted that the vehicle needed to be impounded, and the RCMP was responsible for the accused's property. To ensure that the car was kept safe and to maintain continuity the property, the first officer called the second officer. The trial judge held that this was required under the provincial traffic safety legislation, which requires that a motor vehicle that is immobilized or impounded must be dealt with by the officer. The trial judge interpreted this as requiring an officer, in circumstances where the officer has reasonable grounds to believe an offense of impaired operation has occurred, to immediately cause the vehicle to be impounded, to serve a notice of immobilization on the driver, and to continue the immobilization for 30 days. The immobilization can be either in the police officer's possession or in the possession of a garage keeper. The summary conviction appeal court did not agree that the provincial traffic safety legislation obligates a peace officer to, at all times, remain with an accused vehicle or wait for that vehicle to be picked up by a tow truck. It would be acceptable in some circumstances to immobilize vehicle by retaining the keys to the vehicle and then later arrange for a longer-term immobilization. This interpretation is consistent with prior jurisprudence, wherein the court found that parking a vehicle in a safe place, locking it and seizing the keys amounts to immobilization. As such, the peace officer was not obligated to remain with the vehicle until a colleague or tow truck arrived. This however does not end the analysis. The test is not whether the peace officer could have obtained the breath sample earlier. The test is whether the breath sample was obtained as soon as practicable in all the circumstances. As such, the summary conviction appeal court reviewed the reasons for any delay given by the officer, as well as all of the relevant factual circumstances. The summary conviction appeal court found that the time from the mandatory screening demand to the departure from the scene was reasonable. The period between 8:56 AM and 9 AM was used in implementing alcohol screening. The period between 9 AM and 9:04 AM was used to read the accused his rights and giving the mandatory breath demand. The period between 9:04 and 9:19 AM is the period that is most at issue. During this time the police radioed for another officer to attend at the scene, searched the vehicle for alcohol, obtained the accused's medications, found a firearm and brought it back to his police vehicle. He then spoke to the accused about further firearms, obtained these firearms, and brought those firearms back to the police vehicle. When the second police unit arrived, the accused was taken to the police station. The summary conviction appeal court found that this time period was also used reasonably. This is because while maintaining a chain of custody of the vehicle was not necessary under the *Traffic Safety Act*, the circumstances in this case justified it. The vehicle was on the shoulder of the highway. As a result, it was reasonable for the constable to radio his colleague to secure the vehicle. The constable,

being alone in his police unit, did not have the option available to leave someone with the subject vehicle. The officer's stated concern about ensuring the safety of the accused's vehicle was reasonable given the location the vehicle and the lack of options. The constable engaged in tasks in the 15-minute period that were reasonable and necessary. Although there is no precise breakdown of how much time was required for each of those tasks, it was reasonable to search the vehicle for alcohol, secure the firearms and obtain the accused's medication. Given the necessity of travelling back-and-forth between the two vehicles to do these tasks and the time necessary to complete the tasks, the 15 minutes taken before the accused was taken away from the scene was reasonable. The police are not expected to account for every minute before the breath samples are obtained. The accused's appeal was denied.