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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 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 5 (Breath, Blood, and Evaluation Demands), Chapter 6 (Failing or Refusing to Comply), Chapter 8 (The Presumption of Operation) and Chapter 10 (Presumption Regarding: Breath Samples; Blood Samples; Type of Drug)

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Highlights

- **The Offence of Having, within 2 Hours of Ceasing to Operate a Conveyance, 80 or more mg of Alcohol in 100 ml of Blood—Detention under s. 10(b)**—Charged with impaired driving and “over 80”, the accused claimed *Charter* rights were breached by the officer having left him in the cruiser for 38 minutes while they awaited the arrival of a tow truck. Although the wait had been prompted by the officer’s concern for public safety, the court found breaches of s. 8 and s. 10(b) to have taken place. The court however refused to exclude the evidence against the accused: *R. v. LaChance*, 2025 NSPC 13, 2025 CarswellNS 674 (N.S. Prov. Ct.).
- **Presumption regarding Breath Samples, Blood Samples, Type of Drug—Presumptions regarding Breath Samples**—Whereas the investigating officer had testified that the first sample taken from the accused had been provided into an approved instrument, he did not give similar evidence regarding the second sample, and the accused challenged the court’s reliance on the certificate of the qualified technician, in the absence of such evidence. The court disagreed with this claim, after having juxtaposed former s. 258(1)(g) of the *Criminal Code*, which had featured prerequisites for the admission of the certificate, with its successor provision, s. 320.31(1), which sets out no such prerequisites, resulting in a less onerous test: *R. v. Cross*, 2024 BCPC 271, 2024 CarswellBC 4174 (B.C. Prov. Ct.).