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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 6 (Failing or Refusing to Comply), and Appendix WP (Words and Phrases).

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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—"Over 80": Sentencing—**The 88-year-old accused, who had no licence and who was subject to several lifetime driving bans, pleaded guilty to "over 80" and to five counts of driving while disqualified. The court considered his extensive criminal record between 1998 and 2022, which record included convictions for dangerous driving, driving while disqualified, and flight, and imposed a four-year sentence to be served concurrently, a DNA order, and another lifetime driving prohibition: *Rex v. Frank Rock*, 2025 CarswellOnt 13246 2025 ONSC 4353, 2025 W.C.B. 1335 (Ont. S.C.J.).
- **Failing or Refusing to Comply—General—Ingredients of the Offence—**The Court of Appeal for Saskatchewan overturned the accused's conviction for failing to comply with a breath demand contrary to s. 320.15(1) of the *Criminal Code*, after having concluded that the *mens rea* required for this offence cannot be established merely with proof that the breath demand had been made of the accused —the accused's intention to fail to provide a suitable sample needs to be proven as well: *R. v. Emereuwa,* 2025 SKCA 83, 2025 CarswellSask 339, 453 C.C.C. (3d) 188, 512 D.L.R. (4th) 600, [2026] 1 W.W.R. 77, [2025] S.J. No. 235 (Sask. C.A.), reversing 2024 SKKB 149, 2024 CarswellSask 365, [2024] 11 W.W.R. 493 (Sask. K.B.), leave to appeal allowed 2026 CarswellSask 239, 2026 CarswellSask 240 (S.C.C.).