

Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. <i>Distribution List</i>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

BREATHALYZER LAW IN CANADA

McLeod, Takach & Segal

Release No. 3, March 2026

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 11 (Certificates, Notice of Production of Certificate Evidence and Cross-Examination of Qualified Medical Practitioner, Analyst, or Qualified Technician) and Appendix WP (Words and Phrases).

Thomson Reuters®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

Highlights

New entries to the Words & Phrases of this service include the following recent judicial interpretations by the Supreme Court of Canada:

- **ALCOHOL STANDARD—*Supreme Court of Canada***—“[. . .] Alcohol “standard” means a particular proportion of alcohol in a solution, either a gas (called “dry gas” standards) or liquid (called “wet bath” standards). Alcohol standards are prepared by a manufacturer and certified for use with an approved instrument by an analyst before they are shipped to the qualified technician. [. . .]”: per Rowe, Moreau JJ. (Wagner C.J.C., Karakatsanis, Martin, Kasirer, Jamal, O’Bonsawin JJ. concurring), at para. 27 of *R. v. Rousselle*, 2025 SCC 35, 2025 CarswellNB 577 (S.C.C.).
- **WET BATH ALCOHOL STANDARDS—*Supreme Court of Canada***—“Wet bath alcohol standards generally have a concentration of 121 mg of alcohol (plus or minus 3 mg) in 100 mL of liquid solution. These standards are known as “100 milligram percent solutions” (Jokinen and Keen, at p. 341) because they have a target value of 100 mg percent, provided that the temperature of the alcohol standard is within a range of 33.8 to 34.2°C (*Recommended Operational Procedures*, at p. 4). [. . .]”: per Rowe, Moreau JJ. (Wagner C.J.C., Karakatsanis, Martin, Kasirer, Jamal, O’Bonsawin JJ. concurring), at para. 30 of *R. v. Rousselle*, 2025 SCC 35, 2025 CarswellNB 577 (S.C.C.).
- **CERTIFIED BY AN ANALYST—*Supreme Court of Canada***—“When s. 320.31(1)(a) [of the Criminal Code] is read in the context of ss. 320.34(1)(e) and 320.4(c), it is clear that Parliament intended the phrase “certified by an analyst” to carry the same meaning as “suitable for use”. Parliament has simply changed where the relevant wording is found, but has not changed the meaning of the provision. The textual difference between the current scheme and its predecessor is not a substantive change that requires the Crown to prove that the alcohol standard was certified through the analyst’s evidence ” per Rowe, Moreau JJ. (Wagner C.J.C., Karakatsanis, Martin, Kasirer, Jamal, O’Bonsawin JJ. concurring), at para. 112 of *R. v. Rousselle*, 2025 SCC 35, 2025 CarswellNB 577 (S.C.C.).