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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 3 (Offences Under Sections 320.14(1)(c), 320.14(1)(d) and 320.14(4)), Chapter 4 (Screening Demands — Alcohol and Drugs), Chapter 5 (Breath, Blood, and Evaluation Demands), Chapter 6 (Failing or Refusing to Comply) and Chapter 10 (Presumption Regarding: Breath Samples; Blood Samples; Type of Drug).

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Highlights

- **The Offence of Impaired Operation (Driving or Care or Control)—Impaired Operation: Sentencing**—The accused driver pleaded guilty for impaired driving and driving while disqualified, for which the minimum sentence of 120 days of imprisonment was required by s. 320.19(1). The trial judge, however, imposed a four-month conditional sentence in light of the health issues and despite the Crown having shown how his health needs would be accommodated in jail, as well as having insisted that a conditional sentence was not available in this instance. On Crown appeal of sentence, the Superior Court of Justice characterized the trial judge’s refusal to apply the law as an affront to the administration of justice, and turned to the question of an appropriate order, given that the conditional sentence had substantially been served. After having found nothing to suggest that the accused’s health needs could not be met, and no basis to give credit to the portion of the conditional sentence that had been served, the court imposed 120 days’ imprisonment: *R. v. Leclaire*, 2025 ONSC 4203, 2025 CarswellOnt 12715 (Ont. S.C.).
- **Screening Demands—Alcohol and Drugs—General**—The police stopped the accused’s vehicle from proceeding further on a private driveway, the lawfulness of which stop the accused challenged at trial. The Territorial Court of Yukon held the police to have been authorized to conduct a random stop of the accused’s vehicle after having distinguished the legislative provisions that regulate driving in the Yukon from those of Ontario – whereas, in Ontario, a random stop must be conducted on a highway, there is no such condition restricting where random stops in the Yukon may be made: *R. v. Jules*, 2024 YKTC 9, 2024 CarswellYukon 121 (Yuk. Terr. Ct.).