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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 6 (Failing or Refusing to Comply), Chapter 10 (Presumption Regarding: Breath Samples; Blood Samples; Type of Drug) and Chapter 14 (Penalties and Sentencing)

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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—The Effect of the Canadian Charter of Rights and Freedoms on s. 320.14(1)(b)—Other Charter Issues**—Despite its comments on the incorrect use of trial management powers to leap to a s. 24(2) *Charter* remedy without having invited input from the parties on whether to proceed in this way, the New Brunswick Court of Appeal dismissed the accused’s appeal of the Summary Conviction Appeal Court’s order for a new trial: *Parenteau v. R.*, 2025 NBCA 42, 2025 CarswellNB 151, 2025 CarswellNB 152, 575 C.R.R. (2d) 314 (N.B. C.A.).
- **Screening Demands: Alcohol and Drugs—Introduction**—While discussing the requirements of the s. 320.31 presumption and requirements of reasonable notice and form of signature in a certificate of analysis, the majority of the Saskatchewan Court of Appeal upheld the conclusion that the Mandatory Alcohol Screening demand in s. 320.27(2) of the *Criminal Code* was constitutional: *R. v. Wright*, 2025 SKCA 52, CarswellSask 191, 449 C.C.C. (3d) 139, 506 D.L.R. (4th) 575, [2025] 10 W.W.R. 74, 580 C.R.R. (2d) 32 (Sask. C.A.).