

# Publisher's Note

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<b>A Guide to BREATHALYZER CERTIFICATES IN CANADA</b> Alan Pearse Release No. 1, April 2026
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## What's New in This Update

This release features to the updates in Chapter 8 (Evidence to the Contrary).

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## Highlights

All parties will want to review: *R v. Rouselle*, 2025 SCC 25. The accused was stopped by the police in an impaired driving investigation. He was arrested and taken to the police station where he provided two (2) samples of his breath which were each over the legal limit. He was charged with CC 320.14(1)(b) and the matter was set down for trial. At trial, the crown sought to prove his blood alcohol concentration via the presumption of accuracy. The crown did not call the qualified technician who administered the accused's breath tests and did not call the analyst who had certified the alcohol standard used in the breath testing procedures. Instead, the crown relied on the certificate of the qualified technician to assert that a system calibration check had been done, the result of which was within 10% of the target value of an alcohol standard that was certified by an analyst. The crown attempted to lead two (2) certificates of analysis stating that the alcohol standard was certified by an analyst. These were not admitted by the trial judge, who found that the crown had not given reasonable notice to the accused. The 2018 amendments to the criminal code amended the evidentiary requirements for proving blood alcohol concentration in impaired driving cases. CC 320.31(1) establishes a "presumption of accuracy" which allows the crown to rely on a person's breath alcohol test results as "conclusive proof" of their blood-alcohol concentration at the time the breath tests were conducted. To get the benefit of the presumption, the Crown must prove beyond a reasonable doubt several preconditions set out in CC 320.31(1)(a) – (c). One of the preconditions is that there must be a "system calibration check" where the results are within 10% of the target value of an alcohol standard that is certified by an analyst. Therefore, the crown must prove that the alcohol standard used in the system calibration check was "certified by an analyst." Previously, qualified technicians were allowed to give evidence on whether an alcohol standard was suitable for use to satisfy similar preconditions. The trial judge held that the crown needed to produce evidence, either by certificate or directly from the analyst to prove that the alcohol standard used in the system calibration check was certified. Because the court held that the certificates were inadmissible, the trial judge held that the crown had not proven one of the preconditions beyond a reasonable doubt and therefore the crown could not rely on the presumption of accuracy. The accused was acquitted. The summary conviction appeal judge overturned the trial judge's interpretation and entered a conviction. The summary conviction appeal judge held that the crown could prove that the alcohol standard was certified by an analyst via the qualified technician's evidence, whether by certificate or viva voce evidence. The Court of Appeal unanimously upheld the summary conviction judge's decision and confirmed the conviction. The Supreme Court of Canada dismissed the appeal. The purpose and context of the amendments, together with the legislative

evolution of the scheme, lead to the conclusion that Parliament intended to maintain the scope of the evidence a qualified technician may give. As such, CC 320.31(1)(a) does not preclude the crown from proving that the alcohol standard used in the system calibration check is “certified by an analyst” through the evidence of the qualified technician, either by certificate or viva voce testimony. The crown is not required to produce evidence from the analyst to prove this fact. In the case at bar, the crown led the certificate from the qualified technician who administered the accused’s breath tests. The certificate stated that before each breath sample was obtained, the qualified technician conducted a system calibration check the result of which was within 10% of the target value of an alcohol standard that was certified by an analyst as being suitable for use. This was sufficient to prove beyond reasonable doubt that the alcohol standard used in the system calibration check have been certified by an analyst. The statute must be read in its entire context and the words in their grammatical and ordinary sense considering the object of the act, and the intention of Parliament. This is the modern approach to statutory interpretation: text, context, and purpose. This is the primary tool to determine the meaning of a statutory provision. Other principles of interpretation, such as the strict construction of penal statutes, only receive application where there is ambiguity. Ambiguity does not arise when courts have come to different conclusions or because a provision is complex. A genuine ambiguity only exists where the modern approach can give rise to two or more plausible interpretations. When interpreting the phrase “certified by an analyst,” it is important to look to the legislative evolution of the 2018 amendments. The Crown has historically been able to rely on the qualified technician, rather than the analyst, to prove that the alcohol standard was suitable for use, even if this evidence is presumptively inadmissible hearsay. It is not reasonable to read-in additional technical requirements that Parliament did not intend the crown to have to prove. There is not sufficiently clear parliamentary intention in the statute to remove the evidentiary shortcut. When read in context, it is clear that Parliament intended the phrase “certified by an analyst” to carry the same meaning as “suitable for use. The plain meaning of CC 320.32(1) also supports this interpretation. This section is not limitless, but only relates to its authorized purpose in prosecutions for impaired driving. CC 320.32(3) still allows the accused to raise a reasonable doubt as to the alcohol standard. The Crown must disclose the certificate of the analyst as part of its statutory obligation. If the Crown proceeds with only the certificate, the accused can rely on a defect to argue the likely relevance of cross-examining the qualified technician’s assertion. The Crown’s disclosure obligations must be distinguished from the evidentiary requirements that they have to meet to prove the presumption of accuracy at trial. Just because the crown is required to disclose the certificate of an analyst does not mean that the crown is required to produce it at trial as proof that the alcohol standard was certified.

