Legal Education Society of Alberta

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Impaired Driving

Calgary, Alberta **Edmonton, Alberta**

Chair

Ian Savage
Savage Oykhman Law
Calgary, Alberta

Faculty

The Honourable Judge Robert Shaigec
Provincial Court of Alberta
(Criminal Division)
Edmonton, Alberta

Marlo MacGregor
Alberta Crown Prosecution Service
(Team Lead, Criminal Driving Unit)
Calgary, Alberta

Timothy Foster QC
Foster Iovanelli Beyak Kothari
Calgary, Alberta

Melissa Kostiuk
Alberta Crown Prosecution Service
Calgary, Alberta

Katherin Beyak
Foster Iovanelli Beyak Kothari
Calgary, Alberta

Steve Smith
Gunn Law Group
Edmonton, Alberta

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Mens Rea in Refusal Cases

Prepared by:

Katherin Beyak

Foster Iovanelli Beyak Kothari

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***MENS REA* IN REFUSAL CASES**

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INTRODUCTION

The wording of a refusal charge has changed and now reads:

> 320.15(1) Everyone commits an offence who, knowing that a demand has been made, fails or refuses to comply, without reasonable excuse, with a demand made under section 320.27 and 320.28.

PART 1: ELEMENTS OF REFUSAL

In order to obtain a conviction, the Crown must prove the following elements beyond a reasonable doubt:

1. A valid demand was made of the accused;
2. The accused failed/refused to provide the sample, and
3. The accused had the requisite *mens rea* (to be discussed later).

Once each of these elements has been proven, it remains open to an accused to prove that he/she had a reasonable excuse for refusing the demand in order to avoid conviction.

Does the New Wording Change the Elements?

The addition of the phrase "knowing that a demand has been made" codifies the long-standing common-law requirement that the accused must understand that a demand has been made.

The case of *R v Warnica* is a good starting point for the discussion of understanding a demand.[1] At trial, the accused had been acquitted of the refusal charge seemingly because he was too intoxicated to comprehend the demand, notwithstanding the appearance that he had understood. Ultimately the Court held that self-induced intoxication was not a defence to a refusal charge and in the course of judgment stated the following:

> The first essential is to prove that the accused was alive and conscious and that he appeared to understand the demand. Such understanding would usually be apparent if, as in this case, the accused used English words to refuse the demand. The Crown would, however, fail at the threshold of its case if its evidence revealed, for example, that the accused at the time of the demand, was unconscious for any reason, including intoxication or that he

[1] (1980) 56 CCC (2d) 100; 1980 CanLII 2897 (NSCA).