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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

LEGAL EDUCATION SOCIETY OF ALBERTA

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The New Presumption of Identity: Proof of Elements

Prepared by:

Tim Foster QC

Foster Iovanelli Beyak Kothari



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INTRODUCTION

The new legislation dealing with impaired driving includes substantial changes to both substantive and procedural impaired driving law.

One of the new provisions is s. 320.31(1)(a) which requires the Crown to prove: **before each sample was taken, the qualified technician conducted ... a system blank check the result of which is within 10% of the target value of an alcohol standard that is certified by an analyst.**

The relevant portion of the standard CQT in Alberta reads as follows: **THAT prior to each of the said samples I conducted a system calibration check, the result of which was within 10% of the target value of an alcohol standard which was certified by an analyst. The alcohol standard was suitable for use in the said approved instrument and identified as Airgas lot AG 301602.**

The question is whether the Crown can prove that the “alcohol standard is certified by an analyst” through the Certificate of a Qualified Technician (CQT) rather than by filing a Certificate of an Analyst (CA).

RELEVANT LEGISLATIVE PROVISIONS

The relevant portions of section 320.11 reads as follows:

320.11 The following definitions apply in this Part.

analyst means a person who is, or a person who is a member of a class of persons that is, designated by the Attorney General under subparagraph 320.4(b)(ii) or paragraph 320.4(c). (*analyste*)

qualified technician means

(a) in respect of breath samples, a person who is designated by the Attorney General under paragraph 320.4(a); and

(b) in respect of blood samples, a person who is, or a person who is a member of a class of persons that is, designated by the Attorney General under subparagraph 320.4(b)(i).