

## **Short Snappers:**

### **E. Service of the Certificate**

#### **Proof of Service of Certificate: Criminal or Civil Standard**

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## PROOF OF SERVICE OF CERTIFICATE: CRIMINAL OR CIVIL STANDARD

### INTRODUCTION

The purpose of this paper is to provide a review of the case law in this area and to provide defence counsel with practical arguments and authorities to advocate for a criminal standard for service of certificates. In the first part of this paper, the relevant legislation is reproduced. The second portion of this paper discusses Supreme Court of Canada authority typically used by defence counsel for the position that the notice criteria in s. 258(7) of the *Criminal Code* must be proven beyond a reasonable doubt. The third part of this paper discusses superior court decisions directly on point and the diverging Provincial Court interpretations of them. The later part of this paper highlights superior court decisions from various Canadian jurisdictions which, although not directly on point, are informative of the requisite standard of proof.

### THE LEGISLATION

The notice and presumption provisions relating to breath and blood certificates are contained in s. 258 of the *Criminal Code*, and the relevant parts of that section are reproduced as follows:

258. (1) In any proceedings under subsection 255(1) in respect of an offence committed under section 253 or subsection 254(5) or in any proceedings under any of subsections 255(2) to (3.2),

...

(c) where samples of the breath of the accused have been taken pursuant to a demand made under subsection 254(3), if

...

(ii) each sample was taken as soon as practicable after the time when the offence was alleged to have been committed and, in the case of the first sample, not later than two hours after that time, with an interval of at least fifteen minutes between the times when the samples were taken,

(iii) each sample was received from the accused directly into an approved container or into an approved instrument operated by a qualified technician, and

(iv) an analysis of each sample was made by means of an approved instrument operated by a qualified technician,

evidence of the results of the analyses so made is conclusive proof that the concentration of alcohol in the accused's blood both at the time when the analyses were made and at the time when the offence was alleged to have been committed was, if the results of the analyses are the same, the concentration determined by the analyses and, if the results of the analyses are different, the lowest of the concentrations determined by the analyses, in the absence of evidence tending to show all of the following three things - that the approved instrument was malfunctioning or