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CRIMINAL CODE DRIVING OFFENCES

McLeod, Takach, Segal
Release No. 9, September 2021

Publisher's Special Release Note 2021

The pages in this work were reissued in September 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the September 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This release features updates to the case law and commentary in Chapters 1 (The Offence of Criminal Negligence — Sections 219, 220, 221, 662), 2 (The Offence of Dangerous Operation (Driving) — Section 320.13), 3 (The Offence of Failing to Remain — Sections 320.16(1), (2), (3), 320.17 (flight), 320.19(5), 320.20, 320.21, 320.22, 320.24(4), (5), (5.1), (9)), 4 (Criminal Code Prohibition Orders — Sections 320.24(1), (2), (3), (4), (5), (5.1), (6), (7), (8), (9), (10), 320.25(1), (2), (3)), and 5 (Driving while Disqualified — Sections 320.18(1), (2); 320.19(5); 320.22(4), (5), (5.1); 320.24(4), (5), (5)(a); 320.25(1), (2), (3); 320.32(2), (3), (4), (5), (6), (7)).

Highlights

New case law discussed with this release includes the following:

- **The Offence of Dangerous Operation (Driving): Section 320.13 — Miscellaneous Issues — Evidentiary Issues** — The Information to Obtain his blood from the hospital included the accused’s admission to having been the driver and a witness’s statement regarding the gender of the driver. The court found the witness’s statement to have been misleading, and held the accused’s admission to have been obtained in breach of his ss. 10(a) and 10(b) *Charter* rights — once these pieces of information had been excised, however, the ITO still featured sufficient information to form reasonable grounds: *R. v. Fagan*, (2020), 72 M.V.R. (7th) 90, 2020 CarswellAlta 2321 (Alta. Q.B.).
- **Criminal Code Prohibition Orders: Sections 320.24(1), (2), (3), (4), (5), (5.1), (6), (7), (8), (9), (10), 320.25(1), (2), (3) — Mandatory Orders of Prohibition (s. 320.24(1), (2)) — “found guilty of an offence under subsection 320.14(1), 320.15(1) ...”** — Although the 2018 amendments had removed the power to order a discretionary prohibition for criminal negligence causing death, the court could still impose a prohibition with conviction of the included offence of dangerous driving: *R. v. Boily*, (2020), 71 M.V.R. (7th) 342, 2020 CarswellOnt 15185 (Ont. C.J.).

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