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**A Guide to
BREATHALYZER CERTIFICATES
IN CANADA**

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What's New in this Update:

Section 10(b): Right to Counsel — Reasonable Diligence — An investigation into a multi-vehicle accident, which had resulted in at least one death, included witness-statements that another vehicle, a speeding Mercedes SUV, had caused the crash. The Mercedes SUV and its two occupants, the accused and his companion, were found on the nearby roadside. The police observed as the two were being treated by first

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responders — they noted an overwhelming odour of alcohol and they overheard each indicate that the other had been driving the Mercedes SUV. Although the constables at the scene did not know which of the two had been driving, a senior officer ordered for both to be arrested, which arrests were carried out while they were being transported to hospital, including the readings of their rights to counsel, a caution and a breath demand. The constable who accompanied the accused was not confident that these readings had been understood, and made arrangements for a Farsi-speaking officer to assist at their destination. In the ambulance, this constable also noted the accused's slurred speech, and an examination of bruises left by his seatbelt revealed the accused to have likely been the driver of the Mercedes SUV. At hospital, a combination of the accused's injuries, medical treatments and frustrated communication attempts left the Farsi-speaking officer with uncertainty as to whether the accused had understood his right counsel. A friend of the accused arrived at the hospital and advised police of an available lawyer, though no further steps had been taken to put the accused in touch with this lawyer. At trial, the court assessed the treatment of the accused's *Charter* rights under ss. 9 and 10. According to the court, the lawfulness of the arrest hinged on the reasonable and probable grounds held by the senior officer who had ordered the arrest, which the court indeed found — even though, at the time, there was no reason to view the accused or his companion as more likely to have been the driver, the impossibility of anyone other than one of the two having driven the Mercedes SUV offered sufficient basis to arrest them both. The court then scrutinized the police conduct surrounding his s. 10 right to counsel, and found s. 10(b) to have been breached — the court could not comprehend why the police had failed to provide the lawyer's contact-information, as furnished by the accused's friend at hospital, to the accused at all. The court however declined to exclude, under s. 24(2), the evidence obtained after arrest, since its admission would not have brought the administration of justice into disrepute: *R. v. Hayatibahar*, 2022 ONSC 1281, 2022 CarswellOnt 2184 (Ont. S.C.J.).