

Bill C2 comes into effect July 2, 2008 implementing substantial change to the “evidence to the contrary” defence. The following is a summary from the Parliamentary webpage:

“Clauses 24(3) to (6) update section 258(1) to restrict challenges in court to the blood-alcohol concentration test result. While previously a defendant could call on witnesses to testify that he or she had drunk only small amounts of alcohol, or that he or she was drinking at a rate at which the alcohol consumed would have been absorbed and eliminated by the accused’s body, Bill C-2 limits the use of “evidence to the contrary” to evidence tending to show that the breathalyzer was malfunctioning or was operated improperly, that the malfunction or improper operation resulted in the determination that the concentration of alcohol in the accused’s blood exceeded 80 mg of alcohol in 100 ml of blood, and that the concentration of alcohol in the accused’s blood would not have exceeded 80 milligrams of alcohol in 100 millilitres of blood at the time when the offence was alleged to have been committed. Clause 24(6) ensures that the signature of the technician who certifies the breathalyzer printout is sufficient evidence of the facts alleged in that printout, without necessitating proof of the signature or official character of that technician. In essence, the Alcohol Test Record printed by the breathalyzer that confirms that it is in good working order, will be admitted as evidence.”

It can be anticipated that this legislation will be seriously challenged by defence lawyers across Canada on several constitutional, legal and scientific grounds.

Kelly Dawson  
Managing Partner  
Dawson Stevens & Shaigec