

DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS: IMPORTANT AMENDMENTS TO THE CRIMINAL CODE

By : M^e Annie Charron, lawyer

Last July, important amendments to the *Criminal Code* came into effect. From now on, it will be more difficult to present a defence to the infractions regarding impaired driving. Witness testimony demonstrating that the accused person should have obtained a blood alcohol rating of less than 80 mg per 100 ml of blood, following an analysis of his consumption and certain physical aspects, will no longer be sufficient to raise a doubt and obtain an acquittal.

Section 258 (1) of the *Criminal Code* now stipulates that the accused must also demonstrate, with the help of an expert, that the approved alcohol test did not function properly or was used incorrectly.

The Quebec Association of Defence Lawyers intends to contest the constitutionality of this provision and will attempt to obtain a decision from the Supreme Court declaring that this new provision deprives the accused person of any defence. In addition, there have been decisions in cases throughout Canada which will eventually be appealed before the higher courts. Within several months, there should be jurisprudence which will indicate how the courts of first instance should apply these new provisions of the Code.

A second important question is now before the courts: are these amendments immediately applicable and do they also affect arrests which were made before July 2008? Lawyers practicing criminal law are divided and there are two schools of thought on

the matter. Until the Supreme Court makes a decision, many cases will be appealed throughout Canada.

In addition, many new articles of the *Criminal Code* will make it easier for police officers to determine if a driver has used drugs before driving. The evidence which formerly could only be made by way of a blood test, can now be adduced by way of observations of the police officers.

It is also important to note that the minimum fine has been raised from \$600 to \$1000 for a first infraction and that longer jail terms are expected in cases of accidents causing injuries or death.

Unfortunately, despite these new amendments, it seems that accidents caused by impaired drivers continue to make news headlines....

MODIFICATIONS TO THE BANKRUPTCY AND INSOLVENCY ACT

By : M^e Jean-Sébastien Michaud, lawyer

New provisions of the *Bankruptcy and Insolvency Act* have been in force since July 7, 2008. Immunity from seizure of registered retirement savings plans (RRSP) and protection of salaries and unpaid contributions to retirement plans in bankruptcy cases are some of the important changes to this law:

Immunity from seizure of RRSP

The *Bankruptcy and Insolvency Act* now excludes registered retirement savings plans (RRSP) and registered retirement savings funds (RRSF) from the debtor's asset base which can be divided among its creditors. When a person declares bankruptcy, these

new provisions will prevent the seizure of funds from these plans and will exempt all RRSPs whether they are registered with an insurer, a bank or any other source.

However, these provisions will not apply to contributions to such funds which were made during the twelve (12) months preceding the date of the bankruptcy.

Protection for salaries and unpaid contributions to retirement savings funds

A second series of amendments reinforces protection for employees in case of an employer's bankruptcy or receivership. In effect, these provisions modify the order of creditor collocation by creating supra-priorities for the payment of employees and contributions to retirement funds which have not been paid.

There are also other changes in addition to the two above-mentioned amendments, notably with respect to the priority plan for distribution, the definition of "opening of bankruptcy", reduction of the period of discharge from bankruptcy regarding student loans and the Convention regarding International Guarantees for Mobile Equipment (Aeronautical Property).

Conclusion

In conclusion, this new law will have significant consequences regarding bankruptcies and from now on the new provisions must be considered carefully.

NEWS FROM OUR FIRM!

- **Prévost Fortin D'Aoust** recently took part in the Hybride Technologies-Ubisoft transaction. We wish them continued success now that have joined forces.
- Following the nomination of the new Bishop of Saint-Jérôme, **Me André Ramier** was reappointed as counsel to the Council for Economic Affairs for the diocese.
- Our office in Sainte-Agathe-des-Monts has now moved and is located at **120**, rue St-Vincent. Other coordinates remain the same.
- On November 13th, **Me Joanne Côté** will give a training session regarding recent developments in municipal law at the annual symposium of l'Association des directeurs municipaux - section Laurentides, to be held at Hôtel Mont-Gabriel
- **Me André Morin** was named personality of the month of September for the Thérèse-de-Blainville Chamber of Commerce at a lunch event on September 24th.
- Remember that you can view previous issues of this newsletter on our website at:

<http://www.pfdlex.com/fr/colonne/index.html>

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