



2016-09-29

Submission: To Standing Committee from ATC regarding amendments to CCC (Bill C-226)

To: The Chair of the Standing Committee on Public Safety and National Security

The Alcohol Test Committee (ATC) of the Canadian Society of Forensic Science has provided scientific advice to the Minister of Justice with respect to determining the blood alcohol concentration (BAC) of drivers for the past 50 years. The ATC has evaluated equipment for breath testing; made recommendations regarding the management of a breath testing program, including training personnel and maintaining equipment; and made recommendations on the procedures to be followed by a qualified technician to ensure that the BAC produced by an approved instrument is accurate and reliable.

The ATC recognizes that Bill C-226 is currently before the Standing Committee for review. The ATC would like to take this opportunity to share our comments about sections of the bill which address alcohol testing and disclosure of documents related to alcohol testing.

1. Section 320.32(2). The proper working order of an approved instrument is of critical importance and the ATC suggests that the Criminal Code should reflect a very straightforward requirement that will ensure the proper functionality of the approved instrument. This can be distilled into two main requirements:
 - a. A system blank test shall be conducted and shall give a reading not greater than 10 mg/100 mL;
 - b. A system calibration check shall be within 10% of the target value of an alcohol standard certified by an analyst.
2. Section 320.33(1). The phrase “describing the procedures they carried out” does not exist in the current version of the Criminal Code, and could be broadly interpreted, which may result in lengthy descriptions of the laboratory practices involved in the completion of an analysis. Accordingly, we recommend the removal of any reference to “procedures” in this particular section. Furthermore, we recommend that the Criminal Code continue to describe the contents of certificates as per section 258(1).
3. Section 320.35(1). The ATC suggests greater clarity can be achieved by specifically embedding the information required to assess the functionality of an approved instrument within the proposed legislation. This will allow the courts to proceed without the need of referencing outside documents. The relevant information is:
 - a. The results of all blank tests associated with the subject breath test;
 - b. The results of all calibration checks associated with the subject breath test;
 - c. The certificate of analyst associated with the alcohol standard used for the subject breath test;



- d. Any messages produced by the instrument during the subject breath testing procedure that indicate an exception or error has occurred;
- e. Subject breath test results as outlined in sections 320.32(1) and 320.32(2).

If accepted, the above suggested changes in 320.35(1) may make sections 320.35(5) and 320.35(7) unnecessary and, if so, need not be included.

Thank you for your consideration.

Sincerely,

Daryl Mayers, PhD
Chair, Alcohol Test Committee