

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R v. MacIsaac*, 2026 NSPC 13

Date: 20260120

Docket: 8732651, 8732652

Registry: Sydney

Between:

His Majesty the King

v.

Brandon MacIsaac

LIBRARY HEADING

Judge: The Honourable Judge A. Peter Ross

Heard: December 12, 2025, in Sydney, Nova Scotia

Decision: January 20, 2026

Summary: Accused was charged with impaired driving and driving with blood alcohol in excess of the legal limit. The evidence included police observations of an overturned vehicle, apprehension of the accused a short time later in an intoxicated condition, and subsequent breath samples. Crown sought to rely on an automated voice alert from the overturned vehicle to establish the time of last driving. Defence argued that an unknown third party had stolen and driven the vehicle. The reliability of the automated alert came into question. Though not, in the final analysis, integral to the outcome of the case, proof of the time of last driving where a court must calculate blood alcohol levels by extrapolation from delayed measurements arose for consideration, as did the importance of a breath reading to proof of impaired driving.

Issues:

1. The identity of the driver - whether there is a reasonable possibility that an unknown third party was the operator of the vehicle at the material time;
2. What should be proven about the time operation ceased where Crown seeks to rely on the extrapolation and presumption found in s.320.31(4);
3. Whether the automated call to 911, being electronic evidence, provided reliable evidence of the time of last driving;
4. Whether the evidence proved the impaired driving charge - the evidentiary significance of the accused's blood alcohol concentration when measured some time after the actual driving.

Result:

The third-party suspect defence was disbelieved. The automated voice alert was admissible and reliable evidence of the time operation of the vehicle ceased, considered against relevant provisions in the Canada Evidence Act. When Crown seeks to rely on the s.320.31(4) extrapolation and presumption, the time of last operation should be proven to fall within a narrow and defined interval. A high blood alcohol concentration measured reasonably proximate to the time of driving may provide cogent evidence of impaired ability to drive. The accused was proven guilty on both charges.

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Charge: Section 320.14 of the *Criminal Code*

Counsel: Glenn Gouthro, for the Crown
Alan Stanwick, for the Defendant

By the Court:

REASONS FOR DECISION

[1] Brandon MacIsaac is charged with “drinking and driving” offences under sections 320.14(1)(a) and (b) of the *Criminal Code*.

[2] Section 320.14(a) requires the Crown to prove that a person operated a conveyance (here, a motor vehicle) while their ability to do so was impaired by alcohol or drug or both. Impaired driving is a long-standing offence in Canadian law.

[3] Section 320.14(b) is of more recent vintage. It requires the Crown to prove that a person has, within two hours of ceasing to operate a motor vehicle, a blood alcohol concentration that is 80 mg. per 100 ml. of blood or higher.

[4] A person could find themselves facing a ss.(b) charge although they had not driven while impaired. In such circumstances subsection (5) of s.320.14 provides a defence (termed in the legislation an “exception”). If charged, the person would have to show at trial that they consumed alcohol after they stopped driving, that they did so with no reasonable expectation that police would be seeking a breath sample, that the amount they drank explains the blood alcohol readings obtained by police, and that the readings are consistent with a blood alcohol level which is less than 80 at the time they were actually operating the vehicle. This has been termed ‘innocent intervening consumption’.

[5] For ease of reference, relevant sections of the *Criminal Code* referred to herein are reproduced in an appendix.

FACTS

[6] At 3:57 a.m. on July 29, 2023 Cape Breton Regional Police were dispatched by a 911 operator to a motor vehicle accident on Keltic Drive near Sydney, N.S. The 911 operator had been alerted to this event by an automated call, apparently from a Ford vehicle. 911 received location information and a phone number associated with the vehicle; these were provided to police.

[7] The 911 operator ascertained that the site of the crash was “approximately 824 Keltic Drive”. This was narrowed to “788” a short time later, and it was indeed

in this “700 block” that police found a Ford F150 truck overturned in the ditch. It was lying on its passenger side. Its head and tail lights were on, but nobody was in or around it. A back door was open. The accused’s cellphone and wallet were found in the vehicle. No keys were located.

[8] While *en route* to the scene police determined through Eastlink telecommunications company that the phone number which had been ‘linked’ to the vehicle was subscribed to “Brandy Rambeau” with an account address of 1020 Keltic Drive. Cst. MacDonald stayed at the scene while Cst. Melski continued driving towards 1020 Keltic Drive. He got only three to four hundred meters further when he encountered the accused walking in the middle of the road. The area is sparsely populated. The accused was barefoot. His jeans were wet and muddied up to the knees. Melski assumed he was connected to the crash of the F150. Given that Mr. MacIsaac was dishevelled and confused, Melski was concerned that he might be injured. He also had in mind the possibility of other occupants and their whereabouts and condition. This was at 4:05 a.m.

[9] Mr. MacIsaac told Melski that he was “going home to 1020 Keltic Drive”. In response to the question “Is there anyone else I should be concerned about?” the accused replied, “I’m the only one in the truck, but I wasn’t driving.” He had no keys on his person. Melski noticed a smell of liquor and observed that Mr. MacIsaac was “swaying pretty good”. At 4:21 Melski arrested the accused and made a standard demand for samples of his breath. Mr. MacIsaac was taken to the Membertou station where he later provided two samples, at 5:21 and 5:43. Both readings, obtained in compliance with s.320.31(1), were 120 mg./100 ml.

[10] Meanwhile, at about 4:30 a.m., Constables Weatherbee and Billard, who had been called out to help with the investigation, attended at 1020 Keltic Drive and spoke with the accused’s wife, Brandy.

[11] Brandon MacIsaac and Brandy MacIsaac were husband and wife and living at 1020 Keltic Drive on the date in question. Brandy MacIsaac and Brandy Rambeau are the same person. The Ford F150 was a family vehicle frequently driven by the accused.

[12] Defence has not contested the BAC readings, evidenced by Certificate, nor disputed the grounds for arrest, nor made any strong argument against the accused being impaired by alcohol when located by police. There were no known witnesses to the crash.

TERMINOLOGY

[13] I will term the offence under s.320.14(a) “impaired driving” and may refer to the offence under ss.(b) simply as “exceeding”.

[14] S.320.14(b) uses the phrase “after ceasing to operate a conveyance”. Herein, mention of the “time of last driving” is meant to be synonymous with the cessation of operation¹.

[15] I will use the term “offence window” to refer to the two-hour interval which follows the cessation of operation. This is the period when a person who has consumed alcohol and driven a vehicle (or driven a vehicle and then consumed alcohol) is potentially liable to an exceeding charge.

[16] “BAC” means blood alcohol concentration, and I will refer to the automated call received by 911 as an automated voice alert, or “AV alert”.

ISSUES

[17] On its face the facts outlined above present a highly incriminating scenario. Defence called the accused’s wife, Brandy MacIsaac (Rambeau), and through her evidence raised a third party suspect defence. It asked me to consider the possibility that an unknown person had stolen the vehicle and driven it off the road, and that the accused was simply out looking for it when encountered by police. The accused did not testify. For brief reasons which follow I discount this theory entirely.

[18] Other issues emerged at final argument. I asked counsel whether it would be safe to conclude that the time an AV alert was received was cogent evidence of the time of the crash itself (and hence the time of last driving). A person in an overturned vehicle might be stunned or incapacitated for some length of time before regaining the ability to crawl out. No one was called to explain the operation or reliability of whatever automated system had alerted 911 to the event. This all led to a consideration of the specificity with which the Crown must prove the time of last driving.

[19] Crown submitted, firstly, that I could accept the time of the AV alert as the time driving ceased. This being within the two-hour offence window the offence

¹ “operate” means to drive, or to have care or control, of a motor vehicle. This case concerns actual driving, but the reasoning would apply equally to a charge of “care or control”.

would be proven. Alternatively, Crown submitted that the court could conclude, at the very least, that the crash occurred no more than one hour before the AV alert was received. This in turn entailed the application of s.320.31(4) to achieve proof of the BAC within the offence window. That section requires a court to calculate, in accordance with a set formula, what an accused's BAC would be within the offence window where the BAC measurement is obtained after that window has closed – i.e. more than two hours after the accused last operated the vehicle.

[20] Based on my view of the reliability of the AV alert and its correlation to the time of the crash, it is not necessary to resort to the extrapolation/presumption in s.320.31(4) to reach a decision in this case. But given that the issue was raised, I will offer some comments on the application of this section. I will consider the reliability of the AV alert as an output of a computer system, and whether, on the evidence before me, it suffices to prove the time when operation of the vehicle ceased.

[21] I will consider the offence of simple impaired driving; in particular, whether the measured BAC levels can help answer the question of whether a person is impaired in their ability to drive.

[22] These reasons will therefore examine:

1. Whether the identity of the driver is proven - whether there is a reasonable possibility that an unknown third party was the operator of the vehicle at the material time;
2. What should be proven about the time operation ceased, where Crown seeks to rely on the extrapolation and presumption found in s.320.31(4);
3. Whether the automated call to 911, being electronic evidence, provides cogent evidence of the time of last driving;
4. Whether the evidence proves the impaired driving charge - in particular the evidentiary significance of the accused's BAC, measured some time after the actual driving.

THE STOLEN VEHICLE THEORY

[23] Brandy MacIsaac testified that she was awakened by police around 4:00 a.m. on that morning. The accused was not home. She said she had driven her husband

to a cousin's place the previous evening where the latter two were 'having some drinks'. She returned home, parked the truck, and went to bed. Upon hearing the knock on the door, she tried to contact her husband but didn't get through. She then greeted two police officers at the doorstep. When they asked about the vehicle, she told them it was hers, that she had keys for it. She said it was only then that she discovered that the truck had been stolen during the night. She didn't find out where her husband was until 6:00 a.m. when she received a call to pick him up at the Membertou detachment. When she did, she said he had shoes on his feet.

[24] Ms. MacIsaac also repeated things told to her by the accused, including that the cousin received one of her texts, that the text was about the truck being in a crash, that the cousin then drove the accused home and dropped him off in the driveway, whereupon the accused decided to walk up Keltic Drive to look for the truck, at which point he was met by police.

[25] This story is inherent implausible and makes no sense when set against clearly established facts. By the time Ms. MacIsaac was alerted of the situation by police, i.e. by the time she 'knew' the truck was stolen, the accused was already with police and could not possibly have gone off in search of it. I accept the evidence of Melski, Weatherbee and Billard as to their actions and the times of such.

[26] Additionally, I accept the evidence of Weatherbee that Ms. MacIsaac did not tell him that the vehicle was stolen, as she claims she did. Weatherbee's evidence on this point was received in rebuttal. Information like this would be highly salient in such an investigation and it is extremely unlikely that police would fail to note and remember such a statement.

[27] It is less than clear why the cousin would not have driven the accused up and down Keltic Drive to look for the truck, rather than leaving him to search on foot, had they been advised of a theft.

[28] Lastly, I note that Ms. MacIsaac has offered exculpatory evidence on behalf of the accused, presumably based on subsequent conversation between them, as to his actions and thinking in walking back to search for the purportedly stolen vehicle. This evidence originates in out-of-court statements made to her by the accused. As such they cannot be considered for their truth, to raise doubt about the identity of the driver, smuggled in through Ms. MacIsaac's testimony.

[29] Crown has thoroughly debunked the defence theory of a stolen vehicle and I am left with no doubt on that account. The utterance made by the accused to Cst. Melski (against interest, admissible) connects him to the vehicle, as do all the other surrounding circumstances. The evidence proves the identity of the driver as the accused, Brandon MacIsaac.

TIME AS AN OFFENCE ELEMENT

[30] With a simple impaired driving charge, the accused's impairment must coincide with actual operation of the vehicle. Crown need not prove the time of driving by the clock.

[31] With an exceeding charge the accused's BAC must be shown to coincide with the offence window. Being an essential element of the offence, the offence window must be proven beyond a reasonable doubt. The offence window begins when operation of the vehicle ceases, i.e. at the last moment of operation (driving). The last time of driving is a marker which the Crown will attempt to establish, from which the two-hour offence window will then be known. It can be proven by direct or circumstantial evidence.

[32] Crown contends that the AV alert came in at the time of the crash. On its face this makes sense, but the court expressed concern that this position rested on untested assumptions about the operation of such a system.

[33] In response, Crown argued that the court "could at least find that the crash occurred within the previous hour" to the AV alert. This calls for a consideration of how the *Criminal Code* sections apply where the time of driving is vague or indeterminate; in particular, how the extrapolation in s.320.14(4) may properly be employed to achieve proof of the BAC within the offence window.

[34] When a breath test is done in accordance with s.320.31(1), the measured result is deemed conclusive proof of that BAC. In most cases there is direct evidence of the time of operation. Police generally apprehend a suspect and obtain a breath sample within two hours of that time. The precise time of last operation need not be proven; so long as it is no more than two hours before the test, the offence is made out.

[35] In situations where the first sample is *not* taken inside the 2 hour offence window, s.320.31(4) provides a means of proving the offence. As noted above, this section requires an extrapolation of the BAC back to the material time, according

to a formula fixed by statute. Provided the delayed test registered at least 20 mg., the court must perform a calculation which adds 5 mg. for every 30 minutes between the end of the offence window and the time of the breath sample. It appears that this provision was intended to capture someone who had apparently committed an “exceeding” offence but where police were unable to obtain BAC evidence within the 2 hour offence window (something which might happen for any number of valid reasons). In such a scenario, even though the *measured* BAC may be below the legal limit of 80 mg., the application of ss.(4) could show that the *actual* BAC was indeed over the legal limit at the material time (i.e. during the offence window).

CASELAW

[36] In formulating the reasons which follow I have considered the following cases, in addition to others cited herein: *R. v. Tweedie* 2023 NSCA 11; *R v Sobczak*, 2024 ONCJ 140; *R v Chevalier*, [2022] OJ No 1252; *R v Tetrushvili*, [2021] OJ No 6883; *R v Taylor*, [2025] OJ No 5390; *R v Soosay*, [2025] YJ No 60; *R v Ben-Mesli*, [2021] NJ No 47; *R v Sooriarasan*, [2025] OJ No 1570; *R v Dube*, [2024] OJ No 868, 2024 ONCJ 105; *R v Bulmer*, [2023] NBJ No 167; *R v Panech*, [2022] OJ No 281; *R. v. Maloney*, NLPC, and *R v Brake*, [2025] NJ No 1.

APPLYING THE PRESUMPTION WHERE BREATH SAMPLING IS DELAYED BEYOND TWO HOURS

[37] A first sample either is, or is not, taken within two hours of the time of last driving. If it *is*, then the offence can be proven without resort to any extrapolation. If it *is not*, then the court is required to apply the algorithm in s.320.31(4). However, the question remains: what evidentiary foundation should this extrapolation rest upon? Should a court perform this calculation without some clear idea of the actual times involved?

[38] Applying the extrapolation, the further one goes back in time from a measured BAC the more alcohol a person must have consumed to achieve that reading (given the steady elimination of alcohol from the person’s system). The presumption is a very powerful tool and should only be available to prove an offence where there is a clear basis for doing so. A given BAC should not be bootstrapped by the 320.31(4) presumption into an exceeding offence unless the presumption has a firm foundation. A presumption should not rest on an assumption; it should rest on clearly proven facts.

[39] To take an example based on the facts before me – where it is clear that an intoxicated accused drove the subject vehicle at some time prior to being apprehended by police - it is obvious that the earlier on the clock that time is, the higher the presumed BAC will be. Where the measured BAC at the time of testing is over 80 mg./100ml. there is no earlier time which will result in a lower presumed BAC. If, on the other hand, the measured BAC is under 80 mg./100ml. it assists the Crown to go back as far as possible to the time of last driving, for this will elevate the presumed BAC to a greater and greater extent and is therefore more likely to prove the offence. Yet, in either scenario, legal proof of the BAC is achieved in the same way, via the extrapolation. There is no justification for applying the extrapolation differently in these two instances; the Code does not contemplate it. Fairness to the accused and certainty in the application of the law suggest that in all cases the Crown should be required to prove the time of last driving before the presumption in s.320.31(4) takes effect.

[40] I therefore think the application of s.320.31(4) must operate from a defined time of last driving to a specific BAC, which will in turn inform the finding required by the charging section itself, s.320.14(1)(b). It is worth bearing in mind that the specific BAC, as calculated, will inform not only proof of the offence, but the penalty to which the convicted accused will then be liable. Section 320.19 prescribes a scale of fines which increase with the accused's BAC. This is an additional reason for insisted on some specificity in the proven BAC, which in turn depends upon having a defined time of last driving.

[41] At the same time, it is unrealistic to expect that the Crown should be required to prove the time operation ceased to the very minute. Eyewitnesses to an event may not take much account of time. Conflicts in the evidence may cloud the picture somewhat. Consequently the Crown may only be able to prove that operation of the vehicle ceased during a certain interval of time. It may be able to prove that the last driving occurred within a span of 5, 10 or 20 minutes, or greater. But I suggest that this interval should not be overly broad.

[42] In *R. v. Brake* (above) at par. 67, the court found that the accused ceased to operate his vehicle “approximately between 8:00 and 9:00 p.m.” It then engaged in a series of hypotheticals to demonstrate that the accused's BAC must have been over the limit at the time of last driving. While the logic is unassailable, I suggest that a more definitive finding of driving time, leading to a more specific finding of the BAC, would be more consonant with the relevant provisions of the Code. I find favour with the court's statement in *R. v. Maloney* (above) at par.21 - “while a

precise time of driving need not be proven, a range of time of driving must be proven beyond a reasonable doubt.”

[43] As to what that proven range of times, or interval, might be, possibly 30 minutes is a reasonable outer limit, i.e., the time operation ceased should be proven to fall within a defined 30-minute interval. I offer this as an aside, recognizing it may be somewhat arbitrary, but am suggesting 30 minutes because it is found in s.320.31(4). It is the increment of time utilized in the s.320.31(4) extrapolation, which may thus serve as a benchmark of sorts.

[44] As stated in *Maloney* and other cases, this time interval, or range of times, *whatever it may be*, should be proven beyond a reasonable doubt. It is a factor critical to the application of a presumption which serves to prove an essential element of the offence.

[45] Lastly, it seems fitting that where the time of last operation is proven to fall somewhere within a certain time interval, that the end of that interval – the later of the two clock-times which define it – should be utilized for the extrapolation. Courts should use the hour and minute which marks the end of that interval to figure out how many increments of 5mg./100mg. should be added on to the measured BAC. This tends to yield a lower presumed BAC than would using the time that marks the beginning of the interval. It yields the most favourable result for the accused, consistent with the presumption of innocence.

ADDITIONAL COMMENT

[46] Hypothetically a person could be arrested on a Sunday morning based on erratic driving known to end at 8:00 p.m. the previous Saturday evening, administered a breath test Sunday at 8:00 a.m., blow 20 mg., and be charged with an “exceeding” offence because the s.320.31(4) extrapolation presumes their BAC to be 140 mg. at the material time. Granted, a person so charged has available to them the excuse provided by s.320.14(5). But should a person be subject to prosecution upon such evidence? Should a person thus charged be required to establish their innocence? In *R. v. Bell*, 2023 ONSC 295, cited in *R. v. Swales* 2025 ONCJ 440 at par.26, the court states:

In my view, to avail himself of the statutory exception, the respondent was required to show on the evidence that there was an air of reality to the application of that defence.

[47] With this in mind, but not forgetting the respect to be accorded prosecutorial discretion, one would hope that the alleged time of last operation is reasonably proximate to the time the samples were taken. As noted in *R. v. Tweedie* at par.15, subsections (1) and (4) of s.320.31 create conclusive and irrebuttable presumptions. An accused is not permitted to adduce contrary evidence. An accused caught in the vice grip of these sections has recourse only to the ‘innocent intervening consumption’ exception and must (at the very least) show that this defence has an air of reality. What is reasonably proximate will depend on the circumstances, including what may be inferred about the accused’s whereabouts and actions in the relevant period. *Prime facie*, it should appear unlikely that there could be a s.320.14(5) exception. In the present case, for instance, the evidence discloses no alcoholic beverage in the accused’s possession, or in the vehicle, nor any obvious way he could have accessed alcohol otherwise.

ELECTRONIC EVIDENCE – The Audio Recording and the AV Alert

[48] Exhibit #1 in the trial is a recording, in CD format, of calls to and from the local 911 emergency and police dispatch system. Exhibit #2 is a transcript of such, provided for convenience and easy reference by the witnesses. The audio contains the voices of operators, dispatchers and police. One hears a series of automated calls made to 911 and various calls and conversations over radio between 911 personnel and police officers. Cst. Melski testified at trial to being a participant, or to overhearing, all the above. He identified the voices and explained the flow of events throughout. Defence accepted the audio CD as a genuine and accurate recording of the foregoing calls and made no challenge to its admissibility as such.

[49] The recording begins with the AV alert to 911, which triggered the entire series of events. An automated voice states, “Attention, a crash has occurred in a Ford vehicle – press 1 at any time for location information or press 0 at any time to speak with vehicle occupants.” The message is repeated in French. In dispatching police, the 911 operator referred to this as “Ford’s version of Onstar”.

[50] I infer that the 911 operator attempted both functions – obtaining location and speaking with occupants. In respect to the occupants, the 911 operator is heard repeatedly saying “hello” but getting no response except an automated message which says, “you have reached 902 578 5744”. The police call Eastlink to obtain subscriber information for that phone number. After verification of the caller by Eastlink, its agent gives the name Brandy Rambeau and the address 1020 Keltic Drive.

[51] In respect to the location, the 911 operator initially says, “I’m coming up with a civic of approximately 824”. There is mention of nearby businesses. Cst. MacDonald is heard saying “I gotta truck, Ford truck upside down here in front of 788.” He is then heard giving the vehicle’s plate number to dispatch who, according to Melski “ran the plates” and came up with a registered owner of Brandy Lee MacIsaac, 1020 Keltic Drive. Melski says that he will head there.

[52] As noted above, MacDonald remained on scene while Melski, who had driven by the location and seen the overturned vehicle, encountered the accused a short distance down the road. Two other police officers went to the 1020 address some minutes later and spoke with Brandy MacIsaac (Rambeau).

[53] In final argument, Crown submitted that the court should find that the AV alert originated from the Ford F150 observed in the ditch on Keltic Drive and that the alert was transmitted immediately after the vehicle crashed.

[54] Such automated alert systems may eventually become as mundane a feature of motor vehicles as airbags, which are required by law. If so, their basic features will become common knowledge. While it may be reasonable to assume that an automated emergency call system would be designed to send out an alert as soon as an accident occurred, I think courts must still be somewhat cautious of taking notice of automated call systems or making undue assumptions about the operational features and reliability of such systems. For instance, one may wonder whether there are factors which might delay the creation or reception of the data which emanates from the system. Is the data transmitted via satellite, via cell towers? Might that matter? Does it require the owner’s cellphone to be within range?

[55] The 911 operator referred to the AV alert as “Ford’s version of Onstar”. This is not particularly helpful. The system itself does not specify the time it detected the crash, although one would think it could easily be designed to do so. It says only that “a crash has occurred”.

[56] In *R. v. Major*, 2022 SKCA 80, the Crown sought to prove speeds of a vehicle prior to impact and thus the timing of the application of the vehicle’s brakes. Police had seized a factory-installed module from the vehicle and accessed data from its “event data recorder”. Using specialized software a police officer created a forensic collision reconstruction report which was tendered at trial. The Court of Appeal found that the officer was not properly qualified to give evidence “as to how the system accurately records data and creates accurate output . . . as

such there was insufficient evidence to establish the reliability of the EDR data or the resultant output”(see par.101). The court noted that data of this sort is contained in a component of the vehicle’s safety system that is unfamiliar to the average person and is not comparable to a speedometer, GPS system or iPhone (see par.77).

[57] In *R. v. J.S.*, [2023] O.J. No.2337, Margotiaux, J., had before her “a more robust foundation for reliance on the software” than was found in *Major*. The expert had extensive training in the forms of data from such devices. She accepted the parties’ agreement that the witness’s expertise was sufficient to allow the evidence to be admitted (see par.75 et seq).

[58] At the conclusion of the trial, I voiced some skepticism about receiving the AV alert as reliable evidence capable of supporting the time of the crash. I was wary of stretching judicial notice beyond proper bounds. Possibly a forensic analysis of the vehicle’s computer could yield reliable data. But I did not have that here. There was no witness, expert or otherwise, to explain the features of the system and speak to its authenticity and reliability. There was no printout generated by the vehicle’s computer system, and in the absence of a typical “document”, I was unsure that the *Canada Evidence Act* would inform the matter. Counsel did not address this point in a concerted way.

[59] With time to consider, I think that there is indeed sufficient evidence to support admissibility of this electronic evidence. I further think that this evidence is entitled to considerable weight in the factual determination of the time of the crash.

[60] I am here dealing with the integrity and accuracy of a computer system, not the truth of statements in the usual sense. The AV alert is not a social media text. It is not authored by a person. A computer system cannot be placed under oath or be cross-examined. Indicators of reliability must be found elsewhere. The inquiry concerns the reliability of data, not the veracity of a person’s account.

[61] I have here real evidence (data) in a form which we can interpret (words) which is inextricably linked to an event (crash).

[62] S.31.8 of the *Canada Evidence Act* defines a computer system to mean a device which contains computer programs or other data and pursuant to such can perform logic and control, or any other function. A crash alert system in a motor vehicle appears to fit the definition.

[63] S.31.8 further defines “electronic document” to mean data recorded or stored on any medium . . . and that can be read or perceived by a person or another computer system, including a display, printout or other output of that data. The Ontario Court of Appeal in *R. v. Woodward* [2011] O.J. No.3216, held that an electronic document includes output from devices (as well as printed documents from devices). It thus appears that the automated voice (AV) alert is, in and of itself, an electronic document. It is an output of data from a computer system which was “perceived” by another person or computer system (the 911 system and its operator). Whether this was captured on paper, or on another electronic device, or simply in someone’s memory, is another matter. The AV alert may or may not have been stored in the Ford F150’s computer. But it was captured and preserved on the 911 system. Its transition from there to Exhibit 1, the audio recording, is not contentious.

[64] It thus appears that the automated voice call to 911 and the associated location data and the cellphone number supplied by it are all an “electronic document”. These are outputs of a computer system.

[65] S. 31.1 requires that any party seeking to admit an electronic document has the burden of proving authenticity by evidence capable of supporting a finding that the document (here the AV alert) is what it purports to be. In this regard, I have an actual call which did indeed reach the attention of a 911 operator. The AV alert was not produced in the form of a printout and s.31.2(2) does not apply. None the less, I have before me evidence capable of supporting a finding that the AV call is what it purports to be. This is all that is required to meet the low threshold for admissibility.

[66] S.31.3 of the CEA deals with system integrity. The evidence before me supports a finding that the F150’s computer system, as regards the emergency alert function, was operating properly. In assessing the system’s accuracy and functionality I may also consider other evidence in the case, including how information supplied by the car’s computer was corroborated by those who acted on it.

[67] The car’s system was obviously working as intended, in the obvious sense that it sent out a call to local 911. The detection of the crash and resulting call was, by all appearances, caused by an actual event – the location data retrieved from the car’s system by the 911 operator did indeed lead to a recent crash of a Ford vehicle in the local area. The location data indicated “approximately 824 Keltic Drive” to

the 911 operator. The “800 block” is three to four hundred meters from the exact site of the crash – it is where Cst. Melski located the accused walking. The “call back number”, if I may call it that, was 902 578 5744. Police queried that number with the cell phone provider, Eastlink, which yielded subscriber information of “Brandy Rambeau, 1020 Keltic Drive”. Acting on that information, police in fact located her at the given address. This address and Ms. Rambeau’s connection to the vehicle are clear, as is the accused’s – her own testimony confirms this. By all appearances the car’s computer system was operating properly and giving reliable information. There are strong, interconnected pieces of circumstantial evidence to so conclude.

[68] While caution is required, emergency alerts are not *terra incognita*. Fire and burglar alarms are in common use. These detect motion or heat or smoke and automatically dial out to an emergency responder or alarm company. Car systems increasingly alert drivers of nearby objects, etc. As Crown argued, the very purpose of such systems would be defeated if they did not activate immediately. It is integral to their very design that they send out a signal when the thing they are programmed to detect is detected.

CONCLUSION ON THE TIME OF LAST DRIVING / EXCEEDING CHARGE

[69] I find that the series of AV alerts received by 911 were generated by the crash of the Ford F-150 truck located by police on Keltic Drive, and that the time the first of these went out is reliable evidence of the time of the crash. 911 was in radio contact with Cst. Melski when the AV alert went out a second time. He overheard it along with the 911 operator. He testified that this was at 3:57, the time he was dispatched to the scene.

[70] Considered together with the other evidence in the case, including where and when the accused was found, I find that the crash occurred within a minute or two of 3:57 a.m. on the night in question. This *ipso facto* serves to prove the time operation of the vehicle ceased. The accused was the driver. The first reading of the accused’s BAC was 120 mg. at 5:21, which is within the two hour offence window. These things are all proven beyond a reasonable doubt. Mr. MacIsaac is therefore found guilty of the “exceeding” offence under s.320.14(b)

THE IMPAIRED DRIVING CHARGE

[71] The elements of simple impaired driving, s.320.14(a) are easy to state but sometimes difficult to prove. Crown must prove that an accused's ability to operate a motor vehicle was impaired to some degree by alcohol (or drug, or both). Where there is no direct evidence of the manner of driving, courts are often reluctant to convict based merely on signs of impairment noted afterwards.

[72] When 'impaired driving' and 'exceeding' charges are tried together, as is often the case, the evidence heard at trial is potentially relevant to both. This includes the results of a breath test, typically proven via a certificate under s.320.32 which declares that the certificate "is evidence of the facts alleged" in it. One of these facts is the accused's BAC.

[73] I am aware that other provincial court decisions stand for the proposition that, in so far as an impaired driving charge is concerned, a certificate of analysis may only be relied upon for the limited purpose of establishing that the accused had consumed alcohol, not as evidence of how much alcohol was consumed, nor the impact of the alcohol consumption on the accused's driving ability - see *R. v. Watts*, 2021 NSPC 8; *R. v. Morrison*, 2024 NSPC 28, and cases cited therein. These decisions refer to a somewhat dated decision of our Court of Appeal in *R. v. Dinelle*, [1986] N.S.J. No. 246. Whether the certificate spoke to one reading or two, these courts were reluctant to ascribe much meaning to the measured BAC in the absence of expert toxicological evidence.

[74] In *R. v. Kelly* 2019 NSPC 73, I came to a different conclusion on the potential importance of BAC evidence on a charge of impaired operation (although the accused was ultimately acquitted). *R. v. Lamond*, 2021 NSPC 9, was case of refusal – the accused failed to provide a second sample as she was required to do. I considered the BAC measured in the one sample (170 mg.) as evidence of her level of impairment. As such, although immaterial to the refusal offence *per se*, the stark contradiction between her degree of impairment and her evidence of having had only two glasses of wine in the hours preceding the crash undermined her overall credibility.

[75] Here I have a certificate which provides evidence that Mr. MacIsaac's BAC at 5:21 a.m. was 120 mg. in 100 ml. of blood. He was driving his Ford F150 just prior to 3:57 a.m. Accompanying sections indicate a rate at which courts may presume alcohol to be metabolized. The legal limit for alcohol in a person's system is 80 mg. One must assume that these numbers were not plucked out of thin air. The limit of 80 mg. was chosen by Parliament as an upper limit because beyond

that level, everyone is considered unsafe to drive. Volumes of evidence from toxicologists in countless cases confirm that this is so.

[76] No liquor was found in the overturned vehicle nor on the accused's person. Given the location of the incident and other surrounding circumstances, I find that the accused did not ingest any alcohol between the time of the crash and the time the first sample was taken. This finding is not relevant in any sense to the validity of the statutory presumptions. Rather, it is a circumstance which supports a strong correlation between Mr. MacIsaac's high degree of impairment at 5:21 and his condition at 3:57, the time he drove into the ditch.

[77] In addition to this evidence of a high degree of impairment of the ability to drive at a time reasonably proximate to the time of actual driving (less than one and one-half hours later), I have evidence of the accused's condition just minutes after the crash. While unsteady gait and mental confusion might equally result from trauma, not alcohol consumption, the smell of alcohol on his breath coupled with his staggering is worthy of some weight. Lastly, there is no apparent reason for him to have driven off the road. Weather and road conditions were good. There are a number of reasons why a person might suddenly drive into a ditch, mere inattention being one, but none of these possibilities crystallize around any piece of evidence before me.

[78] I find that the evidence proves Mr. MacIsaac guilty beyond a reasonable doubt of the offence of impaired driving. However, it is not my practice to convict on both impaired and exceeding charges where they arise out of the same transaction. There is no additional moral culpability; it is the same misconduct, proven differently. It smacks of double jeopardy, and hence a conditional stay of proceedings is entered on the charge under s.320.14(a).

A. Peter Ross, PCJ

APPENDIX "A"

320.14 (1)

Everyone commits an offence who

(a) operates a conveyance while the person's ability to operate it is impaired to any degree by alcohol or a drug or by a combination of alcohol and a drug;

(b) subject to subsection (5), has, within two hours after ceasing to operate a conveyance, a blood alcohol concentration that is equal to or exceeds 80 mg of alcohol in 100 mL of blood;

320.14 (5)

No person commits an offence under paragraph (1)(b) if

(a) they consumed alcohol after ceasing to operate the conveyance;

(b) after ceasing to operate the conveyance, they had no reasonable expectation that they would be required to provide a sample of breath or blood; and

(c) their alcohol consumption is consistent with their blood alcohol concentration as determined in accordance with subsection 320.31(1) or (2) and with their having had, at the time when they were operating the conveyance, a blood alcohol concentration that was less than 80 mg of alcohol in 100 mL of blood.

320.28 (1)

If a peace officer has reasonable grounds to believe that a person has operated a conveyance while the person's ability to operate it was impaired to any degree by alcohol or has committed an offence under paragraph 320.14(1)(b), the peace officer may, by demand made as soon as practicable,

(a) require the person to provide, as soon as practicable,

(i) the samples of breath that, in a qualified technician's opinion, are necessary to enable a proper analysis to be made by means of an approved instrument, or

(ii) if the peace officer has reasonable grounds to believe that, because of their physical condition, the person may be incapable of providing a sample of breath or it would be impracticable to take one, the samples of blood that, in the opinion of the qualified medical practitioner or qualified technician taking the samples, are necessary to enable a proper

analysis to be made to determine the person's blood alcohol concentration; and

(b) require the person to accompany the peace officer for the purpose of taking samples of that person's breath or blood.

320.31 (1)

If samples of a person's breath have been received into an approved instrument operated by a qualified technician, the results of the analyses of the samples are conclusive proof of the person's blood alcohol concentration at the time when the analyses were made if the results of the analyses are the same — or, if the results of the analyses are different, the lowest of the results is conclusive proof of the person's blood alcohol concentration at the time when the analyses were made — if

(a) before each sample was taken, the qualified technician conducted a system blank test the result of which is not more than 10 mg of alcohol in 100 mL of blood and a system calibration check the result of which is within 10% of the target value of an alcohol standard that is certified by an analyst;

(b) there was an interval of at least 15 minutes between the times when the samples were taken; and

(c) the results of the analyses, rounded down to the nearest multiple of 10 mg, did not differ by more than 20 mg of alcohol in 100 mL of blood.

(4) For the purpose of paragraphs 320.14(1)(b) and (d), if the first of the samples of breath was taken, or the sample of blood was taken, more than two hours after the person ceased to operate the conveyance and the person's blood alcohol concentration was equal to or exceeded 20 mg of alcohol in 100 mL of blood, the person's blood alcohol concentration within those two hours is conclusively presumed to be the concentration established in accordance with subsection (1) or (2), as the case may be, plus an additional 5 mg of alcohol in 100 mL of blood for every interval of 30 minutes in excess of those two hours.

320.32 (1)

A certificate of an analyst, qualified medical practitioner or qualified technician made under this Part is evidence of the facts alleged in the certificate without proof of the signature or the official character of the person who signed the certificate.

