

BOOK REVIEW

Impaired Driving and Other Criminal Code Driving Offences: A Practitioner's Handbook¹

By Karen Jokinen and Peter Keen

Review by Jonathan Rosenthal

On December 18, 2018, the greatest change to the laws of drinking I have ever seen took place. “Out with the old and in with the new” would be a gross understatement. Forget about “as soon as practicable,” “directly into,” and “motor vehicles.” It’s now “*per se* limits,” “mandatory screening,” and “conveyances.” For everyone, from those newly called to the Bar to the experienced practitioner, there is a new regime in place. As John Lennon sung, it’s just like starting over.

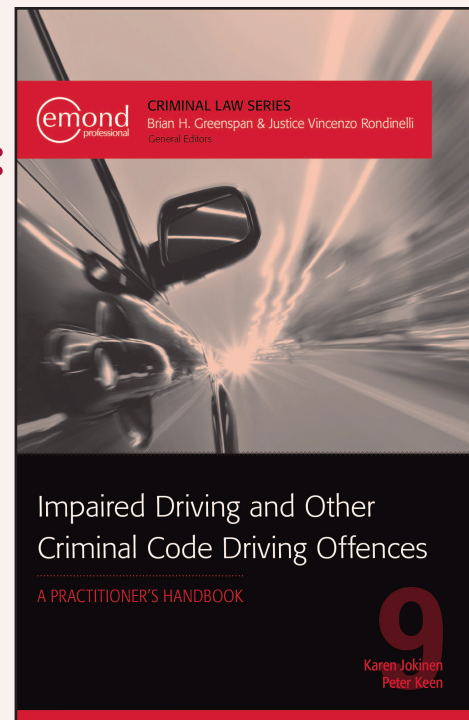
The timing of *Impaired Driving and Other Criminal Code Driving Offences: A Practitioner's Handbook* is perfect. As an authoritative, complete guide to criminal driving offences, it is essential reading for defence lawyers and prosecutors alike in this new era. Similar to most of Emond’s Criminal Law Series, anchored by criminal law heavyweights Justice Enzo Rondinelli and Brian Greenspan, it offers clear and concise guidance on the practical and procedural aspects of motor vehicle — or should I say “conveyance” — litigation.

Together the authors have managed to effectively provide a truly balanced and fair review of all the pressing issues. Peter Keen is an experienced assistant Crown attorney and Karen Jokinen is an equally experienced defence lawyer. They include both

Crown and defence perspectives, supported by complete and competing case law. It is rare to read such a balanced, detailed, and practical approach to criminal law.

The book is effectively organized into 25 chapters. It intelligently starts with a brief overview of what the book encompasses, continues with a historic overview of the law of drinking and driving in Canada, and provides helpful definitions of drinking and driving terminology throughout.

The biggest changes to the new regime involve the creation of the new “over 80” offence, which makes it an offence to blow over 80 within 2 hours of ceasing to drive, and *per se* drug limits, which involve having a concentration in excess of a specified quantity of THC within 2 hours of ceasing to drive. There is also the combined offence of having in excess of an even smaller concentration of THC and more than 50 mg of alcohol in 100 ml of blood. Chapters 2 and 3 comprehensively but simply explain these two areas. The authors effectively outline the new “over 80” offence and contrast it with the old offence, while at the same time discussing the various potential defences. In Chapter 3, on the *per se* limits, they explain the relevant demand sections and include a useful discussion from both Crown and



defence perspectives on the *per se* limits themselves.

Of particular importance to all should be recognition of the straight summary conviction offence with a discretionary driving prohibition for the offence called “operation – low blood drug concentration.” These are new offences. They will be subject to various Charter challenges. There are no cases yet that deal with these entirely new sections. However, the authors have provided a fulsome summary of both.

The remaining chapters deal with issues of criminal driving offences from impaired operation to driving while disqualified to Charter issues and everything in between. It must be kept in mind that all of the driving sections of the *Criminal Code* have been rewritten with new Code section numbers. What I especially like about the organization of the book is the manner in which the authors have uniquely categorized each chapter by topic for ease of reference while at the same time referring to other chapters of relevance and the use of similar fact patterns.

Most chapters set out the new and old section of the offence, highlighting the changes. This section is followed by the description of both the *mens rea* and the *actus reus*, followed by a useful discussion of issues involved, with an updated list of cases, and practical tips.

A few chapters with especially useful tips, all organized with ease of reference in mind, depending on the issue of your case, include:

- Chapter 5, which lists the various demands, the relevant Code section, and their preconditions.
- Chapter 12, which provides a checklist of what should be looked

for when reviewing a brief. I suspect this will be helpful to both new lawyers and seasoned veterans. It is an innovative approach and something I don't think I have ever seen reduced to writing in such a clear form.

- Chapter 20, which concentrates on what takes place at the hospital.
- Chapter 21, which summarizes in a very meaningful way issues of strip searches, video recordings wherein privacy breaches may occur, and overholds. These are important motions that all defence lawyers must put their minds to.

It has been a busy holiday season for the police. In fact, the Toronto Police Service reported that 170 impaired driving charges were laid during the 2018 Festive Ride Program. Many will be under the new legislation. A thorough understanding of the new law will be necessary by all. This is the perfect book to get you up to speed and to take you through your first trial.

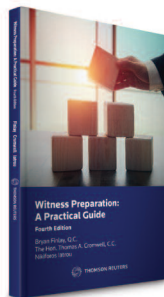
NOTE:

¹ Karen Jokinen and Peter Keen, *Impaired Driving and Other Criminal Code Driving Offences: A Practitioner's Handbook* (Toronto: Emond Montgomery, 2018).

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