



**CRIMINAL LAW FOCUSED DRUG & ALCOHOL  
QUARTERLY NEWS / VIEWS & HELPFUL HINTS**

Summer 2013 / 2014

Could my client have been below 0.05% at the time of driving? What are the implications of drinking up to (or after) the time of a stop, MVA or fall on BAC

Drinking shortly prior to an incident will likely lead to an increasing BAC such that at the time of the incident (random stop; MVA; fall) the BAC would have been lower (and sometimes significantly lower) than the BAC determined at the time of the breath test or blood collection.

Typical Scenarios:

- i) Was drinking up to the time of leaving the party and was stopped within 15 minutes of leaving. Client had a BAC of 0.07% 30 minutes after a random breath test;
- ii) A BAC of 0.09% 2 hours after an accident when tested at home having consumed some 3 beers between the accident and the test;
- iii) A BAC of 0.16% when blood was taken in hospital after the crash.

Typical Question:

On balance of probabilities was my client below 0.05% (Or 0.08% or 0.15%) at the time of the incident (e.g. police stop, accident or incident)?

Answer:

- i) Under the following circumstances the BAC may have been below and indeed probably below 0.05%
  - a. In scenario i) and ii) above the consumption of a number of standard drinks shortly before the test would lead to amount that was unabsorbed at the time of driving yet contribute to the EBT when tested 30 minutes or two hours later i.e. has risen between the time of the stop or accident and the subsequent EBT.
  - b. With respect to scenario iii) firstly was the sample tested serum or plasma? If so you can deduct almost 20% off the value before considering any influence of ongoing absorption so the BAC may have been significantly lower than 0.05% (or 0.08% or 0.15%).
- ii) If there is no consumption of alcohol in the 30 minutes or so before the stop or accident etc. it is likely that the BAC was equivalent to or higher at the time of the stop or accident

The same can be said of any BAC level where a similar important threshold exists i.e. above 0.08% or above 0.15% etc.

Recent Question from Lawyers

- *Q: Are there any drugs that may elevate the concentration of alcohol in my client's blood stream?*

A: Whilst alcohol may affect the concentration of some drugs in the blood, in general there are no drugs that will cause an unusual or unexpected increase in blood alcohol concentration

And a Reminder.....

- We also provide newsletters for lawyers specialising in Litigation, Personal Injury, Workplace and Insurance Law and Family law - Please let us know if you would like to receive these or any past newsletters listed below or join our mailing list
- You should expect your first call to an expert to be free of charge to first determine if they can help;

IFC has found that:

- When we are made aware of the outcome, Expert Reports facilitate positive outcomes for the client in over 90% of cases i.e. charges withdrawn, early settlements, plea deals facilitated or improved negotiated outcomes
- 98% of cases that we testify in end up favourable to the client who engaged us (prosecution or defence)

PAST NEWSLETTERS (Contact IFC for copies) -

- ❖ Drugs, Impairment and Post-Incident Administration
- ❖ Synthetic Drugs - What are they and what are the implications for Criminal Lawyers
- ❖ Oral fluid testing - the process, strengths, weaknesses and false positives
- ❖ What is 'reasonable personal use' when found in possession of a quantity of drugs?
- ❖ Establishing Impairment
- ❖ How to estimate and back-calculate a BAC

**HAVE YOUR GENERAL QUESTIONS ANSWERED via LinkedIn -  
A lawyer's resource to have general Drug & Alcohol-related questions answered**

[http://www.linkedin.com/groups?gid=3976423&trk=hb\\_side\\_g](http://www.linkedin.com/groups?gid=3976423&trk=hb_side_g)

Newsletter provided courtesy of

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