

Breathalyzer disclosure decision puts pressure on Crown



The decision by an Ontario Court of Justice recommending the Crown disclose inspection and maintenance logs for breathalyzer equipment, “puts the fire to the feet of the Crown,” Toronto criminal lawyer [Jacob Stilman](#) tells [Law Times](#).

Justice Michael O’Dea of the Ontario Court of Justice released a lengthy decision in [R. v. Neville](#) on a disclosure application in which he outlined what the Crown should disclose in impaired-driving cases and provided a checklist of sorts, according to [Law Times](#).

However, he added, there’s plenty of room for a higher court to clarify the requirements.

O’Dea gave the defence a chance to “really look under the hood” of the instruments, says Stilman, and “There’s likely to be a high degree of deference to this decision” because it offers something of a disclosure template, he suggests.

O’Dea found the Crown should disclose the inspection and maintenance logs for the instrument and accessories since the date of purchase. He also provided an outline of what the information should contain and responded to each of the demands of the accused. In addition, he agreed that access to the inspection and maintenance manuals is essential.

Stilman, partner at [Lo Greco Stilman LLP](#), says he found acquittals were becoming difficult to come by. The opportunity for the defence is to demonstrate a malfunction in the operation of the machine, however, the result requires a well-funded defence and can take days of court time in pursuit of disclosure.