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Chair

The Honourable Paul DeVillers

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Thursday, May 12, 2005

•(0910)

[English]

The Chair (Hon. Paul DeVillers (Simcoe North, Lib.)): I'd like to call the session to order. We are here for the meeting of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. We will be commencing the review of Bill C-16, an act to amend the Criminal Code on impaired driving and to make consequential amendments to other acts.

We have with us the Honourable Irwin Cotler, Minister of Justice. As well, we have officials with him from the Department of Justice; Hal Pruden, counsel, criminal law policy section; and from the Royal Canadian Mounted Police, Evan Graham, national coordinator, drug evaluation and classification program.

I understand, Mr. Minister, that you need to be in the House at 10 o'clock, so if you could commence your presentation, we can carry on with your officials after that.

Go ahead, Minister Cotler.

Hon. Irwin Cotler (Minister of Justice): Thank you, Mr. Chairman.

I'm very pleased to appear before this committee to speak about Bill C-16, an act to amend the Criminal Code on drugs and impaired driving and to make consequential amendments to other acts.

The passage of Bill C-16 will be a significant step towards making Canada's roads safer and towards protecting the public. Bill C-16 would allow police to demand physical sobriety tests and bodily fluid samples from suspects in drug-impaired driving investigations. This would cover all drugs that impair—illegal, prescription, and over-the-counter drugs. Coupled with training to build instructor capacity, Bill C-16 will create an effective tool that will greatly enhance the ability of law enforcement to investigate drug-impaired-driving incidents.

I'll say a few words about background. We see drug-impaired driving as a significant medical, road safety, and criminal justice problem in our country. Some estimates are that the number of drug-impaired-driving incidents would be about 10% to 20% of the number of alcohol-impaired driving incidents. Using this as a foundation for an estimate, a ballpark figure that can be derived from the alcohol and driving surveys conducted by the Traffic Injury Research Foundation would be that roughly one million drug-impaired driving trips are taken in Canada each year.

[Translation]

In 1999, the Standing Committee on Justice and Human Rights examined the impaired driving provisions of the Criminal Code.

Among the witnesses, it heard from the Drugs and Driving Committee of the Canadian Society of Forensic Science which was very favourable towards physical sobriety testing.

In its report, the Committee recommended that federal and provincial officials consider ways in which to improve the investigation of drug-impaired driving offences. Bill C-16 reflects this consideration.

[English]

Legislation alone, as we understand, does not stop crime. But where it can help, it must do its part, and we must legislate for that purpose. The Criminal Code already makes it an offence to drive while impaired by alcohol or a drug. However, unless police officers have special training, they often find it difficult to investigate drug-impaired driving. Even where police officers do have special training and suspect drug impairment in a driver, there is currently no authority in the Criminal Code for a police officer to demand participation in physical sobriety tests or to demand a bodily fluid sample to check for the presence of drugs.

•(0915)

[Translation]

Therefore, in a criminal drug-impaired driving investigation, the trained police officer is currently operating on the hope of getting a drug-impaired suspect to voluntarily agree to participate in physical sobriety tests or to provide a bodily fluid sample.

A national telephone survey conducted in January of 2004 indicated that 89 per cent of Canadians are very much in favour of improving the tools that police have to investigate drug-impaired driving.

[English]

Let me just move very quickly into the main provisions of the bill.

Bill C-16 would give the police the authority to demand standardized field sobriety tests, SFST, at the roadside. The officer must have reasonable suspicion of alcohol or a drug in the body before making the demand. The tests involve walking heel to toe, following with the eyes the officer's hand movement, and balancing on one leg with the other leg held in front about six inches off the ground.

These roadside tests, Mr. Chairman, take about ten minutes. If the driver fails the roadside test, the officer would then have reasonable grounds to demand a breath test on an approved instrument, in the case of alcohol. In the case of a drug, the officer would have reasonable grounds to demand an evaluation by an officer certified to do drug recognition expert or DRE tests back at the police station.

The purpose of the evaluation is to identify the class of drugs, if any, that is causing impairment. The evaluation involves further physical tests and checking of vital signs. This evaluation takes about 45 minutes. Following identification of a class of drugs, the officer could then demand a sample of a bodily fluid—urine, blood, or saliva—to test for the presence of a drug.

[Translation]

Refusal to comply with a police order to submit to a roadside sobriety test or to an evaluation at the police station, or to provide a bodily fluid sample would constitute a criminal offence, just as it is now an offence to refuse a police order to submit to an alcohol breath test.

The penalties for refusing to comply with the new orders would be the same as the ones that now exist for each of the following offences: driving while impaired, driving while over the "legal limit" of .08 and refusing to provide a breath or blood sample.

[English]

The idea with the drug-impaired-driving investigation under Bill C-16 is not to prove that a given concentration of a particular drug is exceeded and that therefore the person is impaired. My officials are advised that there would be very few drugs for which there would be a scientific consensus on the concentration level at which there would be impairment for the general population of drivers. Bill C-16 proposes no "legal limits" for the wide range of drugs. Instead, the idea is to provide for the investigation of a driver's drug impairment by observing physiological symptoms that are unique to a particular class of drugs, and then to confirm with a bodily fluid sample whether the drug was indeed present.

If the tests do not show impairment, the driver is free to go. If the officers see a medical condition, they can obtain required medical aid.

[Translation]

We believe that the combination of steps, that is the police officer observing the driver's ability to perform the simple tasks of the roadside Standardized Field Sobriety Test, the results of the more comprehensive testing by the Drug Recognition Expert and the confirmation by the independent laboratory analysis of the presence of the drug identified by the DRE as causing the impairment, will provide the necessary checks and balances.

[English]

Let me deal for a moment with some charter considerations. We know that the demands for alcohol breath tests on approved screening devices at roadside, without a right to contact counsel, have been found justifiable by the courts under the Canadian Charter of Rights and Freedoms, pursuant to the section 1 demonstrable justification limitation on a right.

The right to counsel must be given following the demand for an alcohol breath test on an approved instrument back at the station and before the approved instrument testing is done. I anticipate that the same practice would prevail for the DRE evaluations envisaged under Bill C-16. With Bill C-16, we have tried to closely parallel the grounds that our prerequisites for making alcohol breath test demand. I believe that Bill C-16 offers good and important solutions that will be found justifiable under the charter.

Sobriety tests were actually used in alcohol-impaired-driving cases long before the offence of driving while over 0.08 was placed in the Criminal Code. Following the introduction of machines for alcohol breath testing, and with the advent of the charter right against unreasonable searches, police officers have used alcohol breath tests for Criminal Code section 253(b) legal limit charges.

For charges under section 253(a), driving while the ability to operate is impaired by alcohol or a drug, police have used observations of symptoms of alcohol or drug impairment, most often without any physical sobriety test.

Let me say a few words about DRE in Canada and elsewhere. Since 1995, some police officers in B.C. have been trained both in SFST and DRE. This program was pioneered in California in the mid-eighties. It has since been adopted in almost all American states, in some countries in Europe, and in Australia. The program has for more than ten years been overseen by the International Association of Chiefs of Police, which has an advisory board of scientists and medical doctors who ensure that the DRE tests are modified to take into account the latest information on the effects of various drugs. For this reason, Mr. Chairman, Bill C-16 proposes that the DRE test be established by regulation. It is easier to change a regulation, to make technical changes as required, than to seek to pass a bill.

Now the DRE program is being rolled out nationally through a train-the-trainer approach. A national DRE coordinator at the RCMP works with RCMP, provincial, regional, and municipal forces to build training capacity. In all, the federal government has provided \$12 million over three years for this training.

• (0920)

[Translation]

Mr. Chairman, I stated earlier that legislation alone cannot stop crime. The combined effort of governments, police, public and private organizations, families and individuals is required to address drug-impaired driving.

I am pleased to see that there are many Canadians who care about this problem and that steps are being taken to gather data and conduct research and develop public and educational messaging related to drug-impaired driving.

[English]

I anticipate that the standing committee will want to hear from provincial officials, the legal community, the police community, road safety organizations, advocacy groups, and forensic scientists when reviewing Bill C-16. I believe it is important to hear various views and receive information that will make the committee's report as complete as possible. My officials will of course make themselves available to answer any questions this committee has. Indeed, I intend to rely on their respective experience and expertise in the course of our discussions today.

I'm delighted to have with me both Hal Pruden, who's our expert counsel in the Department of Justice on these matters, and also Corporal Evan Graham to lend his experience and expertise as well.

I want to emphasize that there now exists a strong consensus with respect to seeing this bill passed as expeditiously as possible. This committee and its predecessor have engaged in reviews. We've had, over the years, witness testimony to the effect that this kind of initiative is something desired by the public, recommended by the stakeholders, and concurred in by the experts in the field, be they law enforcement officers or those otherwise concerned with public safety and the like.

I wish all standing committee members well in their deliberations on Bill C-16, and I look forward to the report the standing committee will present to the House of Commons on Bill C-16.

Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Minister.

Now we'll go to questions.

Mr. Comartin.

• (0925)

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you for being here, Mr. Minister.

I think the primary concern I have with the legislation is the potential for a charter challenge. I know you made reference to the extensive use of this process in Europe and I believe in some of the states in the U.S. I'm just wondering if there's been any Bill of Rights or constitutional type of challenge in the U.S. or that type of challenge under the European constitution.

Hon. Irwin Cotler: I'll ask any of my colleagues.

Mr. Evan Graham (National Coordinator, Drug Evaluation and Classification Program, Royal Canadian Mounted Police): To the best of my knowledge, there have been no challenges in Europe. Europe uses a modified version, because most countries that are utilizing this program don't have a charter of rights to be concerned with. In the U.S. I'm not aware of any challenges either, and there have been no challenges charter-wise in the Canadian courts over the last ten years.

Hon. Irwin Cotler: I just might add parenthetically that where there has been, with respect to alcohol-impaired driving.... While the

courts may have found a prima facie infraction of a right under the legal rights section of the charter, they nonetheless have upheld it under section 1—that this is a reasonable limit, demonstrably justified, as would be prescribed by laws and would be compatible with what a free and democratic society can do in the interest of public safety and saving lives.

Mr. Hal Pruden (Counsel, Criminal Law Policy Section, Department of Justice): If I might, I'll just add to that.

Of course the European countries do have a European charter of rights, and I'll just mention that the United States Supreme Court has upheld the DRE testing. That's not to say it might not have other court challenges, but it is a system that has been used for many years within the United States, and quite successfully.

I think what Constable Graham was alluding to was simply that in Canada there have been cases.... However, the police have been able only to use voluntary responses rather than a demand to produce those physical sobriety tests. But they have had court cases using the sobriety tests and also using the voluntary cooperation of the suspects. The thought, of course, with the bill is that the police would have the authority to demand, just as they now demand for alcohol breath-testing.

Mr. Joe Comartin: I'm not sure who should respond to this.

I understand the history and have read a number of the cases, and I understand a number of the cases when it comes to alcohol because of the history we've had. It seems to me the court had a progression, coming to the ultimate conclusion that it wasn't offensive to the charter or that section 1 of the charter would be applicable.

But we have a history with regard to testing for alcohol, with observation by police officers in particular that, it seemed to me, was well substantiated, well constructed. There was a sort of intellectual infrastructure, if I can put it that way, that was accepted by the courts. I'm not quite so comfortable that the courts would feel the same way with regard to the testing and assessments that are being made with regard to the use of drugs. That's where I think we may have a problem in the courts.

Mr. Evan Graham: Over the last 10 years we've had 14 drug recognition experts declared experts by the provincial courts in British Columbia. There have been convictions for drug-impaired driving using this protocol in Alberta, Saskatchewan, Manitoba, and Ontario, and there is a case currently before the courts in Nova Scotia. No case that has gone to court has been appealed after conviction.

Mr. Joe Comartin: But in each one of those cases you got voluntary cooperation from the accused.

Mr. Evan Graham: Correct.

Mr. Joe Comartin: I think that's the fundamental difference. Here we're proposing that it will no longer be voluntary but in fact mandatory if the assessment is done. That's where the issue is, as I see it. I think we're into the debate as to what a court will do.

Let me just ask you—

Hon. Irwin Cotler: No, I think the court would apply the generic approach with respect to whether a limit on a right is justifiable under the circumstances, and then they would go into the four-part proportionality test. They would ask themselves, is there a pressing and substantial objective? They would come to the conclusion, in my view, that there is a substantial and pressing objective, which is of course, at the bottom line, the saving of lives. They would then look to see whether the means chosen were appropriate for the purpose or objective sought to be secured, as the other part of the proportionality test. I think the court would conclude here that this is a proportional remedy for the objective sought to be secured.

• (0930)

Mr. Joe Comartin: Mr. Minister, let me follow this up, because it was really where I was going with my next two questions anyway.

It's about the significance of the issue for society, and you may have touched on this. I had to step out for part of your presentation; I apologize for that.

Do we have any quantification of just how serious the problem is with regard to impaired driving due to drugs as opposed to alcohol?

Hon. Irwin Cotler: Yes, I did mention early in my testimony—that may have been when you had to step out—that there are some estimates that put the number of drug-impaired-driving incidents at about 10% to 20% of the number of number alcohol-impaired-driving incidents. If we use this foundation as an estimate, then a ballpark figure that can be derived from the alcohol- and drug-use surveys that have been conducted by the Traffic Injury Research Foundation, for example, would be that roughly one million drug-impaired driving trips are taken in Canada each year. So you can see the seriousness in that regard. There is data, of course, as to how many of these result in fatal accidents and the like. The bottom line, and I think MADD in its testimony over the years has shown this, is that this is a matter of saving lives.

Mr. Joe Comartin: Is that agency the sole source of that information, or are there other data on the prevalence?

Mr. Evan Graham: There have been two studies done in Canada, one in Quebec and one in British Columbia, that dealt with drivers who were killed in motor vehicle crashes. In both instances, 20% of the drivers who were killed had either alcohol or low-level alcohol plus drugs in their system at levels that would be, in all likelihood, impairing. There was also a study done in British Columbia by the B.C. Trucking Association and the Insurance Corporation of British Columbia that showed that a significant number of commercial vehicle operators were driving on a regular basis with drugs in their system.

Hon. Irwin Cotler: I might add that there have been studies where it has been found that drug users are disproportionately involved in fatal accidents. There was a study, for example, by the Société de l'assurance automobile du Québec that determined that more than 30% of fatal accidents in the province involve drugs or a combination of drugs and alcohol. As well, a Traffic Injury Research Foundation poll in 2002 found that close to 20% of Canadian drivers had driven within two hours of taking a potentially impairing drug, be that over-the-counter, prescription, or illegal. The Ontario student drug use survey in 2003 found that close to 20% of high school drivers in the province reported at least once in the preceding year having driven within one hour of using cannabis.

So we do have some data of a rather disturbing character in terms of the disproportionality, as I indicated, of impaired driving causing accidents, but in particular causing fatal accidents.

Mr. Joe Comartin: Mr. Chair, I assume my time is up, but I just wonder if we could ask our research staff to compile some kind of a dossier so we can look at some of those studies. I would like to see some of those studies and do some analysis.

The Chair: Yes, that is done. And could the committee have the information you have just referred to, Minister Cotler?

Hon. Irwin Cotler: Yes, and I'm glad that Mr. Comartin did make that request, because that's as useful information as we could have on this. It would probably even further illuminate the compellability of passing this legislation. We'll provide whatever we can on this.

The Chair: Good, thank you.

Thank you, Mr. Comartin.

Mr. Maloney, go ahead, please.

Mr. John Maloney (Welland, Lib.): Minister, I think we set aside \$12 million over three years to train officers on this new test. What are the costs of training a single officer? How long does it take? How long will it take for us to have a full complement of officers trained to properly administer the sobriety test?

• (0935)

Mr. Evan Graham: The training to get somebody from being not trained at all to being a drug recognition expert entails a four-day course for the standardized field sobriety testing. That is followed by a nine-day classroom portion of the drug recognition expert course. Following the nine days in the classroom, they must undergo some field validation testing, and depending on the ability to get subjects for testing, that can take anywhere from three days to a week. So all in all, we're probably looking at somewhere in the neighbourhood of three weeks of work time to get somebody trained.

Mr. John Maloney: Is the \$12 million over three years sufficient? Again, how long will it take to get a full complement of officers in place?

Hon. Irwin Cotler: Let me just give you some ballpark figures as we have them, and Constable Graham can further elaborate.

Right now, the RCMP is using, as I indicated in my opening remarks, the train-the-trainer approach across the country, doing so in cooperation with provincial, regional, and municipal police agencies. With the new funds and the initial funding that was provided by Canada's renewed drug strategy, which was \$910,000 announced in May 2003, and then, reallocated from within the RCMP, \$4.1 million, there now is, as you indicated, more than \$11 million for this training—close to \$12 million. Canada will have an estimated 3,522 standard field sobriety test or SFST-trained officers, 394 DRE-trained officers, and 175 DRE instructors by 2007-08 with this funding. That gives you, as I say, a ballpark figure for the number of people who will be trained in the field over the next number of years.

Perhaps, Constable Graham, you might want to add concerning the presence in the field of this complement of people who would have been trained, and whether this will suffice for the purposes of the needs in this regard.

Mr. Evan Graham: We've used two different methods to determine what the overall needs across the country are. One is to look at the number of breath technicians who have been trained and the number of people trained on the approved screening device for roadside testing. Using those numbers, there are 24,000 police officers trained with the approved screening device and 2,200 currently trained as evidentiary breath technicians.

In some U.S. states they're looking at training all front-line uniformed police personnel, which in Canada would equate to somewhere in the neighbourhood of 60% of the police officers in Canada, of which there are 60,000, and then a further 10% of the people who are trained in the standardized field sobriety test being trained as drug recognition experts. Either way you look at it, we're looking at somewhere in the neighbourhood of 30,000 trained in SFSTs and 3,000 as drug recognition experts, if we had everybody trained who needed to be trained.

Mr. John Maloney: Moving on to education, how much money have you set aside to educate the public in these new programs? Have you done anything to perhaps align yourselves or make alliances with the medical profession? Obviously, people will know that if they take marijuana they may be impaired, but middle-aged people or seniors taking prescription drugs or off-the-shelf drugs may not think they come within these boundaries. Is there any initiative to educate the public on the seriousness of taking drugs other than illicit drugs?

Hon. Irwin Cotler: There is an educational component that is part of the renewed drug strategy. There is the educational work that is done also through the ministry of health. There is the excellent work that is done by NGOs such as MADD, which continues to put out relevant and compelling information in that regard.

I indicated at the outset, I don't believe this is something that can only be accomplished by government. This *sensibilisation*, this education, really has to be a concerted effort that involves government; that involves law enforcement authorities such as the RCMP—and within government, there's the horizontality principle, not only Justice and Health, but a kind of whole-of-government approach to the importance of the educational effort—and working as well with our regional and municipal partners; making this a priority when the federal, provincial, and territorial or FTP meeting

of ministers of justice takes place, so that we ensure that the same kind of message is going out from my counterparts in all the provinces and territories, because they, of course, are involved in the regulatory approach on the ground, and as I said, the NGOs such as MADD.

What you need really here is a critical mass of *sensibilisation* that is carried out by all the stakeholders, governmental and non-governmental, and law enforcement, in the process.

• (0940)

Mr. John Maloney: How would diabetics be treated under this law if they had a sudden attack, either low sugar or high sugar, that affected their driving, if they ran off, say, a major thruway and didn't realize it until—

Mr. Evan Graham: The entire drug evaluation has five different outcomes: one, the person is impaired by alcohol; two, the person is impaired by drugs; three, it is a medical condition, and if it's a medical condition, then the person is sent to a hospital for treatment.... There have been numerous documented cases of persons stopped who are going into a diabetic coma and treatment is sought right away. The other two outcomes are fatigue and just to have a rule-out that the person is not impaired by any substance, but may be either suffering from some mental illness or a physical condition that manifests itself as impairment.

Mr. John Maloney: I drive to my constituency, roughly 600 kilometres, every week. I tell you, when I get out of my car, it takes me a little while to get oriented on my feet. I may stumble a little bit, etc. Would that alert an officer? Or for anybody who's had an accident, whether it's a minor accident or not, people are going to be upset. If it's a major accident, perhaps they've injured their head or they're going to be disoriented and may not be able to do the standard hand-to-nose sobriety test. Is there a certain length of time before the test must be taken? Do you also then take into consideration the situation of the incident, that the behaviour may not be drug-induced, it may just be as a result of the circumstances? Would they be hauled in for a further sobriety test at the station?

Mr. Evan Graham: The sobriety tests are done at roadside and, as stated, take approximately ten minutes. If there are sufficient clues shown to warrant a demand either for a breath test or, if the new legislation goes through, drug testing, the person would be transported back to a controlled environment, which is generally the police station, to undergo the entire drug evaluation. By the time they get back, the person will have been in custody long enough that if it is nerves or something that has been the result of a crash, it will either continue to manifest itself and show itself as being a medical condition or will have gone away, in my experience, to rule out anything other than impairment by alcohol or drugs.

The Chair: Thank you, Mr. Maloney.

We have three minutes left now with the minister.

Ms. Neville.

Ms. Anita Neville (Winnipeg South Centre, Lib.): Actually, Mr. Comartin asked most of my questions related to the charter.

What I'm interested in is the provincial response to the legislation. I know that a number of provinces are participating on a voluntary basis. What consultation has been done with the provinces, and what is their position overall as it relates to the legislation?

Hon. Irwin Cotler: I can just speak in terms of when we had our annual meeting of federal, provincial, and territorial ministers of justice in January, there was clear support for this as an important law enforcement tool. Up to now, as we've indicated, the whole approach of compliance has been, in that sense, traditionally of a voluntary nature. Now we will provide authority to demand the kind of evidentiary and investigative requirement that is necessary.

So there was support from my colleagues at the provincial level, and this has been reinforced in bilateral discussions that I've had with my counterparts. I think they see this dovetailing as well with provincial regulatory initiatives that they are taking within their jurisdiction with respect to licence suspensions and the like. This is seen by them as a necessary investigative and law enforcement resource, and is supported by them.

• (0945)

Ms. Anita Neville: Thank you.

That's fine, Mr. Chair.

The Chair: Good, thank you.

Mr. Comartin, did you have another question before the minister leaves?

Mr. Joe Comartin: I think Ms. Davies has.

The Chair: Ms. Davies.

Ms. Libby Davies (Vancouver East, NDP): I just want to focus on the importance of education. Obviously when you get to the point of someone being impaired, there's the question of law enforcement. But prior to that, it seems to me that the more emphasis there is on education and responsible driving... I think we've seen that with alcohol impairment and driving. The massive education has actually brought about a change in societal attitudes. In terms of either the RCMP or other police departments, or through the Department of Justice or through Health Canada—I know this is related to the marijuana decriminalization bill—what kind of companion will there be in terms of education, particularly for young people, because that's where we do see a greater incidence of drug-impaired driving?

Hon. Irwin Cotler: As I indicated earlier, I think the educational effort really requires a combined governmental and non-governmental approach in terms of *sensibilisation*. We have to look at it in terms of creating a culture of prevention. That is why, as part of the drug renewal strategy, now an additional \$500,000 will be used as well to research and evaluate the drug-impaired-driving problem. This is apart from other allocations that are being set aside for prevention purposes and educational efforts.

So I think we need to concentrate on that, because in this as in everything else we should seek to prevent the problem from occurring to begin with, rather than having to direct our efforts only against addressing the problem once it has occurred. This is addressing the problem that must be addressed in terms of the

incidence we have of drug-impaired driving and the consequences of it in terms of lives lost and people maimed and the like.

In terms of prevention, we can do a lot more in terms of ensuring that we prevent the drug-impaired driving to begin with, and that is where the education comes in. And of course when it comes to education, the provinces and the municipalities have a very important role in that regard.

Ms. Libby Davies: Is it possible to ask one short question?

The Chair: You have one minute left.

Ms. Libby Davies: Okay.

When we talk about drug testing, presumably whether a substance is legal or not is not the issue. I presume that what we're concerned with here is the outcome in terms of the impact on one's behaviour and ability to drive or do other things. How is that distinguished within this test?

I note that you can look at various fields of drug use, so if it's found to be prescription drugs, it may be, first of all, that they have been taken illegally, so how does that affect the enforcement here?

Also, I don't know whether you can quantify how much cannabis is in someone's system, but if it's below the limit that's allowed in the bill for possession, then how does that affect it?

I'm just curious about how you weigh the legality or illegality of these substances either under the decriminalization bill or because they're prescription. Does that affect anything?

Hon. Irwin Cotler: I'll leave that to my experts to answer, because I do have to get to the House. I'd only say that we don't have the same kind of scientific consensus we have here that we have with regard to blood-alcohol content, and we're dealing with a variety of drugs, as you mentioned, different classes of them. So I'll leave it to them to respond.

I'm sorry, but I have to take leave, Mr. Chairman.

The Chair: Thank you, Mr. Cotler. Thank you very much for your time.

• (0950)

Mr. Hal Pruden: The bill does not set a legal limit for drugs the way the Criminal Code sets a legal limit for alcohol.

This bill will assist officers when they are investigating the offence of driving while impaired by alcohol or a drug, which is separate from the legal limit of alcohol offence. This offence already exists, and it will help them whether the individual is impaired by an illegal drug, an over-the-counter drug, or a prescription drug. If the person is impaired through the abuse of a legal drug, then the law as it currently exists already applies to that individual. This bill will simply aid the officers in investigating impaired driving situations.

So this bill is not about setting legal limits for drugs other than alcohol. It is concerned with all drugs that can impair. So if people abuse their over-the-counter prescription drugs and are told not to drive but do it anyway, then, yes, this bill can impact those individuals.

Ms. Libby Davies: But right now, if you're using prescription drugs like the ones you're saying can already be used now, is the testing voluntary or mandatory?

Mr. Hal Pruden: There are two separate pieces there. One is that the law already applies, and the police may be able to prosecute, if the evidence falls into their laps, that individual who is on prescription drugs and impaired and driving.

With respect to tests, the individual at the roadside can be asked to perform physical sobriety tests, but it is on a voluntary basis now. What the bill would do is make it so that the police officer can demand, based on reasonable suspicion, that the person perform these roadside tests. So that's the change the bill would bring.

Ms. Libby Davies: I understand that, but in terms of the current regime, if you're suspected of being under the influence of drugs, is it still voluntary if it's suspected to be prescription?

Mr. Hal Pruden: Yes. And I might ask Constable Graham to add—

Ms. Libby Davies: As it is now, when you say the law applies now, that's still voluntary, though, right?

Mr. Hal Pruden: Right. If there are roadside tests performed right now, under the Criminal Code it's on a voluntary basis, but it can extend to the drugs that are not illegal.

Perhaps Constable Graham could speak from his experience.

Mr. Evan Graham: The sobriety tests that are being done could also be called impairment tests, because we're checking to see if the person is unfit to drive, whether it's alcohol, drugs, fatigue, or a possible medical condition.

If there is sufficient indication to warrant the demand for alcohol or it's showing that alcohol is not the problem but there is still lots of impairment being shown, then we have to request that they come back and do the evaluation to show whether in fact it's drugs or if it's something else that's causing the departure from what we would expect a person to be able to do with the tests.

Whether they are illegal or not, we don't know until the evaluation is complete. The first part of the test is strictly to show impairment. The second portion of the test is to categorize the drug category or categories that are causing the impairment, or in fact may show that it's not drugs at all, but that it may be something that's medical.

And finally, the fluid sample that is obtained is to either confirm or refute what the evaluator has determined the cause of impairment to be.

The Chair: Thank you, Ms. Davies.

Ms. Dhalla.

Ms. Ruby Dhalla (Brampton—Springdale, Lib.): My question was out of curiosity as well. I think Ms. Davies spoke of education, and I don't know if this is necessarily within your jurisdiction in particular. If you detain someone who has been under the influence of drugs, is there any type of educational system set up for anyone who's dependent on any type of particular drug?

The minister spoke about prevention and pro-action, but is there anything after to provide assistance to these individuals?

Mr. Hal Pruden: Currently provinces have the responsibility with respect to their provincial licensing, so a number of provinces have tied in programs for a person to regain their provincial driving licence privilege, which will have them assessed and if they need education they might be put into that stream, or if they need treatment they may be put into that stream.

I'm not as familiar as the provincial officials who might appear before the committee would be in terms of their highway traffic legislation and requirements for assessment in the alcohol regime that already exists. Some of the provinces might already be doing that, but you'd be best to ask that of the officials who come from provinces.

• (0955)

The Chair: Thank you.

Are there any further questions?

Mr. Comartin.

Mr. Joe Comartin: Constable Graham, with regard to the curriculum for the training, is there a manual as to what the course curriculum is?

Mr. Evan Graham: There is. The manual was initially put together with funding from the National Highway Traffic Safety Administration in the United States. There is a technical advisory panel that meets four times a year in the U.S. to review the manual and make changes as they're necessary.

The whole package includes the standardized field sobriety test; drugs-impaired driving, which is an eight-hour class that's usually tacked on to the standardized field sobriety test; the drug recognition expert pre-school; the drug recognition expert school; and there's also an instructor component as well.

Mr. Joe Comartin: Do you have a rough idea of how many pages it is?

The Chair: Perhaps we could request a copy of it for our researchers.

Mr. Evan Graham: I can provide a copy, sure. Ballpark, there are probably 1,200 pages altogether if you take the student instructor manuals together.

The Chair: You have to read every word of it, Mr. Comartin.

Mr. Joe Comartin: I can't just read the head notes?

I would like to see it, actually.

The Chair: Yes. If the witness can provide it to the committee, we will circulate it.

Mr. Joe Comartin: I have one more question on that, Constable Graham. Is that manual used across the country, and is any other material used for training purposes?

Mr. Evan Graham: The manuals and videos that we utilize for training are used North America-wide, or anywhere the program exists. The only changes to the manuals is I have Canadianized the manuals; I've taken a lot of the American terminology out because it was confusing for the students to be talking about 0.08 instead of 80 milligrams percent, for example, or DUI as opposed to impaired driving. But the manuals themselves are the same, regardless of where you take the course.

The Chair: Thank you, Mr. Comartin.

Mr. Maloney.

Mr. John Maloney: I have a short question. The minister indicated that the established DRE test would be done by regulation, which perhaps makes sense, as it's easier to change. But on the other side, it says to me that maybe you're not too sure about the requirements of this testing and whether it will stand up to a charter challenge or otherwise.

Mr. Hal Pruden: No, actually the constitutional law experts within the Department of Justice, colleagues who we have spoken with and who've provided the written legal opinions, are quite firm in their view that this legislation will withstand a charter challenge.

With regard to the regulation, the drafting is done in a way that the regulation will be able to reference existing materials and standards, because the DRE testing comes under the aegis of the International Association of Chiefs of Police and the material is available there. It is anticipated that will be very helpful in guiding the regulations on how the tests would be carried out.

Mr. John Maloney: Thank you, Mr. Pruden.

Thank you, Mr. Chair.

The Chair: Mr. Maloney, could you please take the chair for a few moments? I have to leave.

The Acting Chair (Mr. John Maloney): As long as you counsel me as to what we're up to now.

Ms. Davies.

Ms. Libby Davies: I have one brief question.

What we've had so far is the voluntary regime. Nothing's going to change. You're using the same test, you're using the same training, the same process, but now this can be mandated in terms of enforcement.

Do you have statistics on what number of requests have been made and where they have been complied with? What is the level of voluntary compliance, if I could put it that way?

Mr. Evan Graham: Unfortunately, we don't. Statistics Canada has police reporting for impaired driving charges and they don't differentiate between alcohol and drug impairment.

Until October of 2003, there was no one running this program on a full-time basis, so just trying to keep up with the training and the paperwork that goes along with the certification process was a bit of a daunting task.

We now have access to a tracking system for the DRE program in North America that will allow us to find how many evaluations are done, if they're for charges what the outcomes were, what drug

categories were found, and what their confirmation rate was via toxicology samples.

• (1000)

Ms. Libby Davies: But I find it curious that because it is a voluntary step to go to this next level, nobody has an idea if it's 50%, if it's 20%, if it's 80%. Is there any anecdotal information?

First of all, do we know how often officers are actually...? Is it part of a routine they go through, or are they seldom using it themselves in terms of making the request?

It just strikes me as curious that we wouldn't have that information, because it would be an argument or not, possibly, as to why you need to go to mandatory.

Mr. Hal Pruden: Well, it will certainly vary by province, as Constable Graham indicated earlier, because various provinces have to varying degrees done the standard field sobriety training and the drug recognition evaluation training with their officers. Not all provinces have done that.

B.C. has been the forerunner in getting that training started for their officers. Constable Graham has worked in B.C. and may be able to comment on the experience, at least in that one province, with respect to the officers who were trained in these tests and to what their experience was in terms of the response rate when a drug evaluation or a drug roadside sobriety test was requested.

Mr. Evan Graham: With the straight sobriety tests, my personal experience is that about 98% of the people will do sobriety tests when requested.

For the drug evaluation, we're probably running about 80% compliance in British Columbia, and then the toxicology sample that would go along with that drops down to about 50%. A lot depends on how well versed their counsel is when they exercise their right to counsel. It varies from being told to do the test for the police, to not to do anything, to not to do a specific test, and then once they're finished they'll do everything except for one component.

So it's a bit all over the map right now, and a lot is because of a lack of knowledge on behalf of defence, the people giving legal advice, and because the person's judgment is affected by the substance they'll often do the test despite the fact they were told not to.

The actual hard and fast data aren't available at this time, but we're hoping from now on, with access to this tracking system, we should be able to have far more accurate data than the anecdotal data we currently have.

Ms. Libby Davies: If it is possible, Mr. Chairman, I think it would be great if we could get.... I mean, if B.C. is one of the key provinces that has moved on this—even though it's still a voluntary thing—if we could find out if they do have some reporting information they've put together, even if it's just from that province, I think it would be quite useful.

Of course, I was just thinking there was the one case of the police officer in B.C. who was stopped by I think a drug enforcement officer from the States. If you remember, there was this story of the officer who got stopped on the basis that he was drug-impaired. So presumably this only applies to our own police forces.

Mr. Evan Graham: Fortunately, it wasn't one of the people we've trained who they stopped.

The Acting Chair (Mr. John Maloney): Thank you for those comments, Ms. Davies. We will ask our researchers to see whether that information is available.

Are there any other questions?

There being none, I will adjourn this portion of the meeting, and we'll just reassess as to where we may be going with respect to Bill C-13 and amendments.

Thank you very much for appearing, Mr. Pruden and Corporal Graham. We appreciate your input this morning. It's been very interesting. Thank you.

• (1005)

Mr. Hal Pruden: Thank you, sir.

The Acting Chair (Mr. John Maloney): I will perhaps go on the record again. I'm advised by our clerk that the problem with Bill

C-13 may have been resolved with agreement among the parties. Mr. Macklin was going to make a presentation, but he's now in the House, and that hopefully would indicate that the corrections... There was a small error in our clause-by-clause.

Yes, Mr. Comartin.

Mr. Joe Comartin: Will that require any action on the part of the committee, or can the bill just go to the House?

The Acting Chair (Mr. John Maloney): I understand the bill is just going to go to the House, because there's unanimity in the approach of the parties. We were going to do it here, but there were time constraints, and agreement has dictated that we don't have to do it. The main thing was corrected before it got into the House.

Are there any other questions? No? Then we're adjourned.

Thank you.

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