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Chair

Mr. John Maloney

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Tuesday, June 7, 2005

• (0900)

[English]

The Chair (Mr. John Maloney (Welland, Lib.)): I'll call to order the 43rd meeting of the Standing Committee on Justice and Human Rights, Public Safety and Emergency Preparedness.

Our guests this morning are, from the Royal Canadian Mounted Police, director general Raf Souccar, and Evan Graham; and from the Brant Brantford Drinking and Driving Countermeasures Committee, Lawrence Palk.

Generally speaking, the rules are that we hear from you for roughly 10 minutes, and then there are questions and answers, and we have five-minute rounds.

I would ask Director General Souccar to start off.

Mr. Raf Souccar (Director General, Drugs and Organized Crime, Royal Canadian Mounted Police): Thank you very much, sir. Good morning.

As you indicated, I have Evan Graham with me today. Evan is our subject matter expert, if you will, our national drug recognition expert coordinator for the RCMP, and responsible for training other police agencies across the country as well.

Thank you for providing us with the opportunity to speak. It is my pleasure and privilege to speak to you today on Bill C-16, an act to amend the Criminal Code, and other consequential amendments to other acts.

[Translation]

The RCMP is appreciative that the Government of Canada recognizes that measures must be taken to address drug-impaired driving. The police community, including the RCMP, is increasingly concerned with driving impaired by drugs other than alcohol.

[English]

Studies conducted in B.C. and Quebec show that 20% of drivers killed in crashes have drugs in their blood. However, the number of drug-impaired driving charges has remained relatively low due to a lack of testing mechanisms to facilitate the investigation and enforcement of drug-impaired driving. As a result, the Canadian public often has an erroneous perception of drug-impaired driving. The RCMP is particularly concerned about the prevalence of cannabis use among young people. Even more disturbing is the knowledge that young people do not view taking and driving in the same light as they view drinking and driving. According to a 2001

student drug use survey in Manitoba, both male and female students generally have a strong negative attitude towards drinking and driving, but 19.2% of them indicated that they did not think there was anything wrong with using cannabis products and driving. In fact, almost 26% of male respondents felt that cannabis consumption and driving were in fact acceptable.

[Translation]

As well, a 2002 Nova Scotia student drug use survey unveiled some very disturbing information about young drivers in the province. The results indicated that 15% of Nova Scotia students with a driver's licence drove a motor vehicle within one hour of having had two or more drinks of alcohol, at least on one occasion during the year. Meanwhile, 26% of the students admitted driving within one hour of using cannabis at least on one occasion during the year.

• (0905)

[English]

Since young people represent the subgroup of the population most at risk of motor vehicle accidents resulting in death and injury, the high rate of adolescents driving after cannabis use should be viewed as a serious threat to road safety. The 2003 Ontario student drug survey also revealed similar findings, where one in five drivers in grades 10 to 12 reported driving within one hour of using cannabis during the past year. Just as importantly, 23% of the students also reported being a passenger in a vehicle driven by someone who had been using drugs prior to driving. Once again, these results underline the significance of the proposed Criminal Code amendments and the specific need to educate people about the risks associated with impaired driving, regardless of the specific substance use.

Although Statistics Canada data does not distinguish between alcohol- and drug-impaired driving, the statistics reveal that in 2002—that's the latest we were able to obtain—there were 81,000 impaired driving charges. The existing Canadian studies also show that approximately 20% of impaired drivers are impaired by drugs. Bearing in mind that the discrepancy between the actual numbers is attributable to the lack of officers trained to detect drug impairment, these numbers nonetheless translate to approximately 16,200 potential drug impairment driving charges in 2002.

Currently, section 253 of the Criminal Code prohibits both drug- and alcohol-impaired driving. A suspended alcohol-impaired driver can be compelled by demand to provide a breath sample to measure the concentration of alcohol in their blood and determine if it exceeds the statutory level. This does not apply in the case of suspected drug impairment, as there is no statutory demand in the Criminal Code at this time, nor is there a prescribed level of drug impairment.

[Translation]

The proposed amendments to the Criminal Code entail the inclusion of an offence where a suspected drug-impaired driver is compelled, on demand, to provide a bodily fluid sample—either urine, saliva or blood. Failure to provide a bodily fluid sample, comply with the standard field sobriety tests or complete a drug recognition expert evaluation will be treated in the same fashion as failure to provide a breath sample in a suspected case of alcohol impairment and will result in the same criminal sanctions.

[English]

With the current legislation, police must rely on non-quantitative symptoms of drug impairment such as erratic driving behaviour and witness testimony when investigating a suspected drug-impaired driver. Drug tests are admissible as evidence in court, but only if the driver participates voluntarily in a drug evaluation.

The proposed amendments to the Criminal Code will have a significant impact on the enforcement of drug-impaired driving. While there will likely be an increase in the number of prosecutions for drug-impaired driving, there should be a corresponding decrease in the number of persons killed or injured on our roads and highways.

• (0910)

[Translation]

The Drug Evaluation and Classification Program, which is also known as the Drug Recognition Expert Program, provides a method for the police to gather the evidence necessary to determine if a subject is impaired, and determine the cause of impairment. Since its introduction in Canada in 1995, police officers across the country are being trained in low-level alcohol and drug impairment using the standardized field sobriety tests and drug recognition expert evaluations.

[English]

Drug recognition expert training is not only beneficial in the detection of drug-impaired drivers, but is also advantageous in the detection of alcohol-impaired driving. Since the early 1980s, several endeavours, including legislative initiatives, enhanced enforcement activities, stiffer penalties, and massive awareness campaigns, have played a major role in changing public attitudes and behaviour towards driving under the influence of alcohol.

The implementation of more rigorous legislative measures, including the graduated licensing regulations, and the existence of roadside tests to determine intoxication have contributed to reinforcing the message: do not drink and drive. Not surprisingly, the results of recent student drug use surveys conducted in various jurisdictions clearly indicate that the number of students who drink

and drive is consistently lower than the number of students who use drugs, particularly cannabis, and drive.

As an alternative, young drivers often substitute cannabis for alcohol without any fear of being screened during regular police checks. They do not consider the possible risk associated with this behaviour because they are not told differently. With the shortcomings of the present legislation, these drivers assume that drug-impaired driving is not a problem. In fact, they demonstrate no reservations in admitting that they toke and drive.

Yet even though the amount of data available about the role of cannabis in motor vehicle accidents is more limited than it is for alcohol, cannabis is known to have psychological and physiological effects on driving. Scientists from the University of Auckland in New Zealand have just completed a study unequivocally proving that there is a link between the use of cannabis and accidents. The researchers found that heavy cannabis users are ten times more likely to be injured or to injure others on roads and highways.

Although Canadians believe that driving while impaired by drugs is a serious road safety problem, the use of prescription and over-the-counter medication that can affect driving is quite common. Drivers of all ages will admit driving a motor vehicle after using these types of drugs. Bearing in mind the demographics, we know that in an aging population there is a reason for serious concern. Social permissiveness and latitude towards certain illegal drugs have contributed to a false sense of security for many Canadian drivers. The prescription of cannabis for medicinal purposes and the debate over the decriminalization of marijuana have significantly contributed towards removing the stigma surrounding this drug. By downplaying the use of cannabis and its prohibition, we have also supported the erroneous perception that driving under the influence of cannabis has little or no effect on driving skills.

The RCMP has attempted to raise awareness about drug-impaired driving by participating in several initiatives. Examples include the development of a Health Canada publication entitled *Straight Talk About Marijuana*, designed for parents and youth, and their recently launched website, Be Drug Wise, as well as the launch of a video, now ready to go, in partnership with the Canadian Association of Chiefs of Police, the Toronto Police Service, and Mothers Against Drug Driving, Canada.

A 2003 public survey by the Traffic Injury Research Foundation revealed that Canadians identify driving after the use of illegal drugs second in importance only to drinking and driving on the list of important road safety issues. Almost 82% of the respondents believe the driver suspected of being under the influence of alcohol or drugs should be required to perform sobriety tests, and 80.5% support the idea of setting absolute limits for drugs similar to the alcohol limit for drivers.

By enacting Bill C-16, the federal government will, first, provide to the police community the legislative framework and the instruments required to facilitate the detection and prosecution of drug-impaired driving. Second, it will contribute to making Canada's roads safer and reduce the social, economic, health, and personal costs imposed on society by impaired drivers.

Thank you.

The Chair: From the Brant Brantford Drinking and Driving Countermeasures Committee, Mr. Palk.

Mr. Lawrence Palk (Co-Chair, Brant Brantford Drinking and Driving Countermeasures Committee): Good morning, Mr. Chairman and members of the committee.

On behalf of the Brant Brantford Drinking and Driving Countermeasures Committee, I'm honoured to be with you today to discuss Bill C-16, an act to amend the Criminal Code in regard to drugs and impaired driving. The group of which I am the co-chair has advocated for the anti-impaired driving movement in Brantford and Brant County for the past 20 years. We are also founding members of OCCID, the Ontario Community Council on Impaired Driving.

Our committee comes from a variety of different disciplines, including municipal and county politicians, social services, police officers, youth, victim service advocates, educators, health promoters, and victims of impaired driving. Our perspective on this bill will be a unique one, and by the end of this presentation I hope we will have opened your minds and touched your hearts.

Canada's Charter of Rights and Freedoms speaks very clearly to the notion that the "security of the person" is a basic right that must be respected, and this is rarely clearer than in the case of incidents of impaired driving. As I speak, innocent accident victims are watching, and they are holding you responsible for their security, their rights, and their lives. Each and every one of us risks something every day we climb into a motor vehicle and travel from place to place. Those of us, myself included, who have been victimized by an impaired driver know full well the toll such events take on one's life and limb.

For far too many years, impaired driving has been a leading cause of death and injury. The fiscal cost to Canada is in the billions of dollars annually, and yet there are still those among us who tempt fate and selfishly drive impaired. I am one of the lucky ones. I lived to be here today to speak with you in the hope that you will learn from my experience.

On May 13, 1988, I was the victim of a hit-and-run impaired driver. A broken neck, a fractured skull, a concussion, and other injuries later, I thought it was over. It was not. In 1989, I was diagnosed with a permanent brain injury, which has changed my life. With this in mind, I come to speak on Bill C-16.

For several years now, Canadian society and its Parliament have been engaged in a great debate about what has come to be known as marijuana decriminalization. I am pleased to note that the Government of Canada has come to realize that drug use in society also involves prescription and over-the-counter medications. As well, from evidence that has been made available to our committee, medication and misuse of medications has become more of a reality, and we congratulate the government for realizing this fact. We also

note, and indeed we expect, that the government will hold true to the promise included in Bill C-16 that drug testing, both at the roadside and in police stations, will be made absolutely mandatory. Such tests will not be voluntary, as is presently the case in law.

In respect to Bill C-16, we have two other real concerns.

First, there is the tremendous lack of clarity when it comes to the actual notion of how law enforcement personnel will be trained under the "train the trainer" concept. The RCMP will act as the facilitator for training. In theory it sounds great; in practice, individual police forces in communities, such as my own in Brantford and Brant County, have no clue as to how this program is going to work. How much money will they get, and how many officers will this allow them to train? Will the money even filter down to them at all? Further, one local officer who sits on our committee tells us that the DRE training makes alcohol recognition training look like child's play. It's extremely complex. Even after recently corresponding with Minister McLellan, we are still patiently waiting for a response to our concerns, as are the chiefs of our local municipal and county police forces.

● (0915)

The other concern we have deals with the now famous Canada drug strategy. From the viewpoint of our committee, we know well that the job of promoting Bill C-16 and educating the general public about drug misuse and impaired driving will be a huge undertaking.

Question: is this really a plan? I ask this, given a number of very real realities, beginning with Canada's youth. Most young people are still under the belief that marijuana decriminalization means legalization, and before you say kids had better just get it, let me say it is not quite that simple. In fact, we live in a society where taking marijuana and alcohol in combination is not unusual. I should not have to tell any of you about the potentially lethal effects these two drugs can have in combination, and studies have shown that most teens are moving away from alcohol and into not just marijuana but other drugs as well.

How are you going to reach a kid who is in late high school? In fact, as early as two years ago our committee was warned by educators in my own area that kids as young as 10 were aware of and using such drugs as marijuana. My message to you is that if you don't reach these kids before they are 10 years of age, you may lose them. These are not scare tactics.

Serious attempts at a real Canada drug strategy must be done with a local perspective in mind. My community is radically different from places like Vancouver's east end or downtown Winnipeg, and the approach required is different. I have lived in Winnipeg and I know this to be true.

So where are we now? Alcohol impairment 30 years ago was in its infancy in many ways. We are much smarter now, yet people are still drinking and driving, causing more death and injury. I am a living example of this.

As noted American toxicologist Barry Logan said only months ago at an OCCID conference in Toronto, "The field of drugs is today where alcohol impairment knowledge was thirty years ago". Yet another statement comes from the well-known marijuana advocacy group, NORML. The largest such group in North America states in its principles that users should never toké and drive. Why has well-known B.C. marijuana lawyer John Conroy stated the same thing?

What we need is more harm reduction, not the type of behaviour that suggests decriminalization means, do what you want, including driving, while drug-impaired. Public safety is too important to take an anything-goes approach to impairment. You may never appreciate what a toll impaired driving by drugs or alcohol can take until you, your family, or one of your close friends has been touched by the senseless, selfish, and highly preventable actions of an impaired driver. It changes lives, and I know because it changed mine.

Members of the committee, I welcome your questions and comments.

Thank you.

● (0920)

The Chair: Thank you, Mr. Palk.

Mr. White.

Mr. Randy White (Abbotsford, CPC): Thank you, Mr. Chairman.

As one who has seen one death in my family as a result of impaired driving and who has one member who is permanently mentally handicapped because of impaired driving, I know what you're talking about.

But I do question whether or not Canada has a drug strategy. Look at the rehabilitation facilities in this country that are starving to death and failing because of a lack of money. There's very little advertising, and there's no particular position on crystal meth. You talk, sir, about the downtowns of Vancouver and Winnipeg, but you can equally talk about Sydney, Nova Scotia; Abbotsford and Kelowna, British Columbia; and anywhere in Windsor—or anywhere else in this country. We can no longer use just Winnipeg and Vancouver. And there are pilot projects such as injection sites, with millions of dollars pouring into them to keep people on drugs. I would hardly say this country has a cohesive, coherent national drug strategy.

That's just my opener.

I would like to talk to Inspector Souccar about implementing Bill C-16. I'm totally in favour of where this is going, but I have some problem with the logic when it gets down to your members—and not just your members but the members of municipal police forces all across the country.

You go into the deuce in advertising, publications and videos, but really, television is where it's at, in my mind. Passing out documents

today without hitting them on mass media, to me, is a bit of a folly. That's one thing I want you to comment on.

I might as well throw these out, because I only have five minutes.

The \$12 million put into this whole program is markedly short of what is required. My office has undertaken a bit of a study on the equipment that is required, and just one piece of equipment listed under "equipment needs" costs anywhere from \$250,000 to \$1 million. I highly suspect that given where this is going, we're going to be tremendously short of the money we need. If you really divide \$12 million across this country among the RCMP and all of these municipal forces, the money will be really quite negligible, actually. That's my second question.

You do talk a lot about drinking and using marijuana, but you don't seem to mention meth, cocaine, dust, or any of the other myriad of drugs out there. I wonder why, because the criteria for assessing all of those are significantly different in each of their composite forms.

There you go.

● (0925)

Mr. Raf Souccar: Thank you. I'll try to answer them all, if I have them in the right order. You raise several issues.

The drug strategy, to start, is a difficult thing. We're working together with several agencies, hand in hand, to try to put forward a balanced approach of demand and supply reduction. We recognize that we're very shy on the demand reduction, the education component. We're doing all right on the enforcement side, although we could all use more resources. On the demand reduction side—the education, the treatment, the awareness, the rehabilitation and so on—we're seeing that we're shy in that area.

Having said that, we've done a good job, I think, in educating our youth on drinking and driving. There are several initiatives out there. You see in front of high schools.... I know in Ottawa they have cars that have been subject to vehicle accidents parked outside high schools to educate them. I've been coaching kids in hockey and baseball, from five years old up to major junior hockey at twenty years old, and I speak to them. As recently as yesterday I was told that some believe that at exam time it's a good thing to smoke cannabis because it makes them concentrate better and in turn makes them drive better, because they're more careful. There's nothing about the fact that it reduces their ability to react, to be able to carry out more than one task at a time—drive and worry about traffic, and accelerate or brake and shift, and so on. We certainly have a way to go in that department.

In terms of the funding that's required to allow us to get to the level we need to get to, the renewed Canada drug strategy provided us with \$910,000, which in essence allowed us to have Evan Graham in place as a national coordinator over five years—for salary infrastructure to allow a national coordinator to be in place to set up training. The training costs money. What we've done, also as a result of the Canada drug strategy, is reallocate \$4.1 million that was assigned to a marijuana grow operation team to the drug recognition expert program to allow Evan to then put some courses on across the country.

All along we've thought we needed to be very strategic in how we put the training in place to ensure that we have trained personnel across the country. There's no sense in having them all in one spot. I believe, if I'm not mistaken, we are now at the point of about 75% of non-RCMP members being trained, to ensure that the municipalities across the country have trained personnel. We're also trying to work smarter instead of harder, by "training the trainers" so that these trainers can go out and train others and multiply the numbers at a faster rate.

As far as testing for other drugs is concerned, I know we speak a lot about marijuana. That, I guess, is because it's probably the drug that's most consumed and the one our youth have been getting a very extensive mixed message about concerning the harms associated with cannabis. I think that's why we mention it quite a bit. I've provided the committee with a copy of a tape called *Not Ready To Go*. That tape was, as I said, put together by the Toronto Police Service, the Canadian Association of Chiefs of Police, and Mothers Against Drunk Driving. It's testimonials from families, friends, and victims of a crash just west of Ottawa near Perth, where several individuals—young people after a high school graduation—got into a fatal accident and died. You listen to those who were involved in the accident speak about it five years later, and the emotion that comes out of them. I think that's one of the reasons we focus on cannabis quite a bit.

The drug recognition expert evaluation has seven drug categories that can be identified, including central nervous system depressants; inhalants; phencyclidine, which is PCP; cannabis; central nervous system stimulants; hallucinogens—LSD and that type of stuff—and narcotics and analgesics.

You mentioned crystal meth. We're trying to do something about it as well. On Thursday I leave for Regina. There's a western ministers meeting in Regina itself, where I'll be presenting on the methamphetamine situation, specifically in western Canada but generally across the country.

• (0930)

So we're doing as much as we can to educate and pass the message along. But certainly you make an excellent point by saying we have not done as good a job in educating about taking drugs and driving as we have with drinking and driving.

Thank you.

The Chair: Mr. Marceau.

[*Translation*]

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): Thank you very much, Mr. Chairman.

I would like you to provide me with a concrete example of what Bill C-16 would entail. Let us suppose that C-16 has become law, I head for Montreal one Friday afternoon, accompanied by a friend, I'm driving on the highway and I'm stopped. In concrete terms, what happens once a police officer stops me and I'm pulled over on the 417?

Mr. Raf Souccar: The first thing that a police officer must observe is that there has been erratic driving on the highway. After asking you to pull over, he will approach your vehicle and ask you a few questions. If Bill C-16 becomes law, and he suspects that you are

a drug-impaired driver, he can ask you to undergo a standard sobriety test.

Mr. Richard Marceau: That consists of touching one's nose, walking in a straight line, etc.

Mr. Raf Souccar: Yes, exactly.

If he still considers that you are driving in an impaired state, he can ask you to accompany him to the police station so that a drug recognition expert can perform a few tests.

Mr. Richard Marceau: Is that a request?

Mr. Raf Souccar: It is a request, and if you refuse, it is tantamount to refusing to undergo a breathalyzer test on the side of the road.

Mr. Richard Marceau: Therefore, the mere refusal of accompanying the police officer to the station is in and of itself an offence.

Mr. Raf Souccar: Yes, exactly.

Mr. Richard Marceau: Okay, that is one part of the question.

And if I do not refuse, and I accompany the police officer to the station, what happens then?

Mr. Raf Souccar: At that point, the drug recognition expert intervenes. He can have you undergo several tests. I can ask Evan to explain exactly the steps that are taken at the police station to determine whether or not a person was driving in an inebriated state. The person's pulse can be taken, a vision test can be taken, etc. If a person fails these tests, the third step is taken, which consist of taking a saliva, blood, or urine sample.

• (0935)

Mr. Richard Marceau: Is that mandatory?

Mr. Raf Souccar: Yes, it is mandatory.

Mr. Richard Marceau: If the person refuses, we go back to the previous step. That is an offence.

Mr. Raf Souccar: Exactly. The drug recognition expert also carries out an interview with the police officer who stops the person, to find out exactly what happened.

Mr. Richard Marceau: Okay. Is the specialist at the station a police officer who has received training in that area?

Mr. Raf Souccar: Yes, he is.

Mr. Richard Marceau: Will all police officers be trained to do that? Is this becoming a requirement in obtaining one's diploma from the police academy? Will all police officers be able to carry out this procedure in the near future?

Mr. Raf Souccar: In the near future, no, because we do not have the resources to do so. I explained earlier that we are trying to train trainers. That means providing training to those who will be able to train others, in order to increase the number of trained police officers as quickly as possible. If the bill is passed, I hope that this training will be offered very quickly in police academies.

Mr. Richard Marceau: An issue that has been often raised is that of the reliability of tests. As a police officer, Mr. Souccar, you are comfortable, and consider that the test is as reliable as that to determine the level of blood alcohol. You believe that we will be able to attain the same results and obtain the same convictions, if necessary.

[English]

Mr. Evan Graham (National Coordinator, Drug Evaluation and Classification Program, Royal Canadian Mounted Police): In the United States the program has an 85% confirmation rate by toxicology sample. Of the 15% that are not confirmed by toxicology, there are a number of variables there, including the cut-off level of the state laboratory. If they're testing for cannabis, every state would have a different cut-off level. So they may not test to a low enough level, or they may not test for that specific drug.

Thus far in Canada, the forensic toxicology sections of the RCMP lab, the Quebec lab, and The Canadian Society of Forensic Science have looked specifically for the drug group that was called by the drug recognition expert, and we are running an almost 95% confirmation rate with respect to what the drug recognition expert has found in his evaluation.

The Chair: Last question, Mr. Marceau.

[Translation]

Mr. Richard Marceau: Thank you very much, Mr. Chairman.

At the police station, a person who moves on to the third step provides a urine, blood, or saliva sample. How long does it take to obtain the results of the test?

[English]

Mr. Evan Graham: It depends on the laboratory. It can be anywhere from six weeks to six months. Right now, it's the capacity of the labs, and that has to be addressed as well.

[Translation]

Mr. Richard Marceau: All right, but what happens to the person? Do you allow the person to leave? What happens? Pardon me, but I am not aware of the situation.

[English]

Mr. Evan Graham: The person would be released on an appearance notice or on a promise to appear, and a charge would not be sworn until the result came back from the lab. That's no different from what happens now with a blood sample taken for drugs under a warrant or a blood sample for alcohol that is obtained either by warrant or by demand. We still have to wait until the sample is analyzed.

[Translation]

Mr. Richard Marceau: All right, thank you.

[English]

The Chair: Thank you, Mr. Marceau.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you, witnesses, for being here.

Mr. Souccar, one of the concerns I have with these sections is anticipating some type of a charter challenge. Part of the evidence that would go in at that point, I suspect, would be evidence on the effectiveness of preventing impaired driving due to drugs. Have you seen any studies that show, where this methodology has been

implemented in a jurisdiction, the effect it's had on reducing the actual incidence of impaired driving due to drugs?

• (0940)

Mr. Evan Graham: We are currently doing an evaluation in Canada—we're in the initial stages of it—to track that very question.

In the United States there have been studies done to show the effectiveness. One was done in California and another was done in Arizona and a third was done in Minnesota. In California and Arizona, where the program is very well established, the rate of a DRE if you have to go to trial is very low, because quite frankly, there are just guilty pleas. It's that well accepted by the courts.

Mr. Joe Comartin: Mr. Graham, I know this will be part of a public education program, much as impaired driving for alcohol has been, but what I'm after is the actual reduction in the number of incidents—that is, they don't occur—not pleas of guilty or convictions, but that the incidents just never take place. Are there any studies that show that the incident rate actually drops?

Mr. Evan Graham: I'm not aware of any. Again, if you use Canada, for example, we don't know the extent of the problem. We know that basically 20% of the people killed in crashes are impaired by drugs, but we don't know how many people were involved in crashes or drove safely without getting involved in a crash. That, again, is part of the study we'll be doing to try to ascertain exactly the scope of the problem.

Mr. Raf Souccar: If I could add something, I think you hit it right on when you said it's going to be part of the education process. We've seen a reduction in impaired driving and we've just seen a reduction in the attitudes towards a willingness to drink and drive. I see it among our youth today. You look back years ago and people thought nothing of having a few drinks, getting in the car, and driving. I see kids today not taking the car and taking a bus if they're going out to drink. My son is one of them. He's 19 years old and I see him with his friends. If they are going downtown on a Friday night, they don't take a car. They all have driver's licences, and it's not even an issue. It never comes up. They take a bus.

I think it's part of an education process. Over time, I strongly believe, the attitudes in and of themselves will reduce the number of individuals who are driving impaired.

Mr. Joe Comartin: Mr. Graham, regarding the assessment you're doing now in Canada, do you have any sense when that will be complete?

Mr. Evan Graham: We're at the formative stage right now. We've contracted out to have the literature review and the process mapping done. The actual study will be three years in duration. Basically, it will be done at the time the money available from the current memorandum to cabinet is done.

Mr. Joe Comartin: Okay.

On an entirely different point, there's a section in the code that gives me some concern for the impaired driving because of the number of times it's being used as a defence.

The breathalyzer has a presumption in the code as being accurate but can be rebutted by actual evidence. That has become a whole small business within the criminal defence bar. That section would apply to this type of testing. I don't know if you've given any consideration to the likelihood of the defence being successful. I know this is a bit convoluted, but in effect, the breathalyzer is even more accurate than the toxicology confirmations that you're getting. Whether those are 85% or 95%, the breathalyzer is up close to 100%. In spite of that, we're getting these defences successfully argued repeatedly in our lower courts.

So I wonder if you've done any analysis of the effect of this. Paragraph 258(1)(d.1) is where the presumption is and where the defence lies. Have you done any analysis of what impact that will have?

Mr. Evan Graham: The evidentiary breath-testing instruments actually have a tolerance of plus or minus 20 milligram per cent, whereas any of the fluid samples will give an exact number, without any variation, because it is taken right from the body.

With the drug-impaired driver, there is no presumptive level. Although there are a few drugs that the scientific community agree on that have an actual impairing level, it was looked at whether that should be included or not in the same fashion as the 80 milligram per cent. The problem with paragraph 253(b) is that you can have people who are impaired at a blood alcohol concentration far below 80 milligram per cent. So by obtaining a breath test, you're not necessarily picking up the impaired drivers; you're only picking up people who have been prohibited by statute from driving with a blood alcohol concentration over that number.

With the drug evaluation, we're looking strictly at paragraph 253 (a), impaired driving. If we can prove the impaired driving, tie it to a drug category, and the toxicology result comes back confirming that the drug category was present, then that should tie the whole charge together.

• (0945)

The Chair: Mr. Cullen, five minutes.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chair, and Chief Superintendent Souccar, Mr. Graham, and Mr. Palk.

Mr. Palk, thank you for coming and telling your story. I presume that the person who perpetrated the hit and run was subsequently apprehended, convicted, and sentenced. Maybe you could tell us a bit about that, what kind of sentence he or she did receive.

You mentioned it was drug-impaired driving. Did they establish what type of drug it was?

Mr. Lawrence Palk: It was actually alcohol that was involved. Approximately 10 years before I was hit, the same driver hit and killed a young nurse. When he hit me, I believe he got two months in jail and three months in a halfway house and lost his licence for three years.

Hon. Roy Cullen: That was the extent of the—

Mr. Lawrence Palk: That was the extent of the sentence.

Hon. Roy Cullen: Well, that's a good segue into my next question, for Mr. Souccar.

The first part I want to ask about follows up or builds on Mr. Marceau's point. Let's say a police officer is following a car and there are signs that there are some irregularities in the way the person's driving, and he or she pulls the driver over. The police often also set up these...you wouldn't call them roadblocks, but—

Mr. Raf Souccar: RIDE programs.

Hon. Roy Cullen: Yes, the RIDE program, where the cars come through.

If someone is intoxicated or suspected of being intoxicated, I presume the officers have their nose in there and they can smell it. But with someone who is, let's say, high on marijuana or some other drug, what sort of signs do the police officers look for?

Mr. Raf Souccar: There are several signs that a police officer can look for, everything from the smell of possible drugs consumed while driving, to bloodshot eyes and slurred speech, and those types of signals, and much more, which officers trained in standardized field sobriety testing and drug recognition learn in their training. These would give them the ground to engage the person in a bit of conversation to be able to form an opinion as to whether or not to request that the person do a standardized field sobriety test.

Hon. Roy Cullen: Thank you.

I wanted to come back to the answer that Mr. Palk gave, and say that we often deal here on the Hill with various initiatives on drinking and driving. There's been a bill on labeling beer cans and bottles of spirits and wine. I'm always puzzled by the fact that the people at greatest risk, it seems to me, are the repeat offenders; I've seen some of the statistics.

Your average person who goes out and has a drink or two downtown.... As you say, most people generally deal with drinking and driving responsibly, but invariably, the person who ends up doing something to a person like Mr. Palk is a repeat offender. Somehow we don't seem to be serious enough about dealing with them and putting them away, or taking away their driver's licence permanently. Even if their driver's licence is suspended, they often go out and drive, and you hear that they're arrested again for doing something they shouldn't be doing while their licence was suspended.

I suspect this bill doesn't deal with that, but what do we have to do to make sure the repeat offenders are dealt with more seriously?

• (0950)

Mr. Raf Souccar: Well, I think it's very similar to our earlier discussion about cannabis and how to ensure that marijuana grow operations are dealt with appropriately as well.

Again, education is important, or the ability to present a good case in court and to tell the story and present the evidence in a proper manner to educate the judiciary as to the consequences of the act for which that person is before the court. I think it's sometimes a case of the police needing to be able to present their case better to the Crown, and other times it's the judiciary that needs to be educated as to the dangers and seriousness of the offence.

The Chair: I'm looking at the time, and we have roughly six minutes before 10 o'clock, when we have to take our next witness. I would perhaps ask the committee to consider a three-minute round for questions and answers until our time has expired.

If the committee desires, perhaps you could return. There seem to be a lot of questions that we'd like to have answered.

Mr. Raf Souccar: Absolutely.

The Chair: Agreed.

So we'll have a three-minute round then.

Mr. Warawa.

Mr. Mark Warawa (Langley, CPC): Thank you, witnesses, for being here.

My former job was as a loss prevention officer with an insurance corporation. When there were fatals, I was the one who had to find out what happened and write the report. Often there was impairment involved.

The focus of Bill C-16 is on illegal drugs and alcohol, but prescription drugs can also be an issue in impairment. Arthritis medicine can impair. As we age and get medication, this can become a real issue.

On the national drug strategy, which Mr. White dealt with briefly, we need to have an educational program. You may be aware of a web page that is ready to be released and for some reason is being withheld. We need to educate people on these issues. You may want to comment on the release of this educational web page that's for some reason being held up.

I have two questions. First, what happens to the vehicle while the person is going to the station if they have to meet with a DRE to determine whether there's impairment? Is it impounded? If they indeed are impaired, what happens to the vehicle? There is concern that often the vehicle is towed back to the residence and the person is returned home, only to get back in the vehicle and start driving again. They may not be rational about those decisions and may then pose a risk.

My second question is on drug impairment and alcohol. In the testimony I've heard, it is more difficult to get an impairment conviction than a murder conviction. Often a 24-hour suspension is given in British Columbia. I don't know if it's the same throughout Canada. On Bill C-16, I agree with the sentiment. But in practice, do you foresee it being successful in getting convictions when we already have a difficult time getting convictions with alcohol?

Thank you.

Mr. Raf Souccar: On your first question about the study or the web page that's not being released, I'm not sure which one you're referring to. I know that we've participated quite actively with Health Canada on their website, Be Drug Wise, which contains messages to youth and parents to help them recognize drug use. That's one avenue. The other is the CD I handed out earlier, *Not Ready to Go*. There are other initiatives we're trying to take across the country to ensure that education takes place, because that is an essential component of the strategy.

I'll let Evan speak about the vehicle issue and what happens with it. I understand that it is towed. As to whether it's difficult to get convictions or not, I think what the legislation will do first and foremost is provide the law enforcement tools necessary to at least get the case to court. That's step one. If you can't get the case to

court, convictions become irrelevant. The first step is providing us the tools to detect these individuals impaired by drugs. Then we can work up the case to take it to court for a conviction, if one is warranted.

• (0955)

Mr. Evan Graham: With the standardized field sobriety tests and DRE programs, the training that police officers receive to properly investigate an impaired driving investigation should result in higher convictions. They are receiving far better training than they had in the past.

The vehicle status is the responsibility of the individual provinces. I spent most of my service in British Columbia. We didn't have the authority to tow a vehicle whose driver was impaired unless it was parked illegally. That has since changed—they now impound the vehicle for 24 hours. Each province is going to be different. Normally, where there's no legal mechanism in place, the car would be towed if it was parked illegally or if the driver requested it because of safety concerns.

The Chair: Thank you, Officer Graham.

The Bloc Québécois, Monsieur Ménard.

[Translation]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you.

Judging by the age of your children, I'm a bit older than you are. I can tell you that my children have designated drivers, when necessary, without the need for me to remind them. I think this is a good thing. A lot can be achieved through education.

I practised criminal law for 27 years before entering politics and I witnessed the advent of objective tests, which I believe facilitate the work considerably.

Police officers have also been doing something else these past few years: they have set up road blocks. You are most certainly old enough to remember a time when there were no road blocks. You saw the beginning of this, and this is still being done. There has been a marked decrease of impaired drivers being stopped at road blocks.

Can you talk to me about this difference? If memory serves me correctly, I believe that there were between 12% and 15% of such drivers in the beginning. Now, the figure is 1% or 2%. Is this correct?

Mr. Raf Souccar: I agree with you completely, Mr. Ménard. There has been a remarkable decrease in the number of people driving with impaired faculties. I believe that it is because it is no longer considered acceptable to drive in an impaired state. We have several programs, for example, Operation Red Nose at Christmas time and at New Year's.

We believe that the message has been conveyed, and we have done our duty in educating the public in the best possible way. This resulted in a decreased number of impaired drivers.

Mr. Serge Ménard: Therefore, you have received fantastic results through public education, without having to increase sentences, is this not true?

Mr. Raf Souccar: Sentences were not increased. There are a few cases of more severe sentences, but generally speaking, what you say is true.

Mr. Serge Ménard: It is useful to note this.

If I understand correctly, objective tests, reflex tests, will become mandatory if we pass this bill. Currently, a person you stop at the side of the road is not obliged to submit to these tests. You ask the person to walk in a straight line, heel to toe, close his eyes and touch his ears, etc. Currently, there is no obligation for the person to submit to these tests.

Mr. Raf Souccar: Absolutely not. Right now, it is entirely on a voluntary basis.

Mr. Serge Ménard: The majority of people agree, not knowing it is not mandatory.

Mr. Raf Souccar: There are some who call a lawyer. The majority of those who consult a lawyer refuse the tests. However, many do not consult a lawyer and agree to do the tests.

Mr. Serge Ménard: The last problem...

[English]

The Chair: Mr. Comartin.

Mr. Joe Comartin: No, I'll pass. Let it go back to Mr. Ménard.

[Translation]

Mr. Serge Ménard: Let's talk about marijuana. From what I've heard, it seems to be taken for granted that marijuana produces an effect for several hours, that remains in the blood stream for several days, without affecting driving.

Do you believe that a certain degree of injustice is done toward someone whose blood tests reveal the presence of marijuana? Even more so, one of our Olympic champions claimed that the traces of marijuana detected in his blood stream were the result of second-hand smoke. But I do not believe that that is the reason why he kept is gold medal.

I'd like to hear your thoughts on this subject, because I found your presentation to be very objective, and as such, very useful.

•(1000)

Mr. Raf Souccar: You are totally right. Marijuana remains in the system for several days. Now, toxicology tests can determine the presence of two kinds of THC, tetrahydrocannabinol, in the blood. There is active THC, and inactive THC.

Hydroxy is the main active chemical, whereas carboxy is the non-active one. Toxicology tests can determine if the THC is active or inactive. Active THC remains in the blood for six hours, and no longer than that. Through these toxicology tests, we can determine if the THC in the blood is active or not.

[English]

The Chair: Mr. Comartin, you have 45 seconds remaining in this round.

Mr. Joe Comartin: I'll speak to Corporal Graham after we break. Thank you.

The Chair: I would ask Ms. Neville, briefly, to take a three-minute question and answer and then we'll conclude.

Ms. Anita Neville (Winnipeg South Centre, Lib.): Thank you.

My question was related to charges and convictions on drug-impaired driving as opposed to alcohol-impaired. There seems to be much more as it relates to alcohol-related impairment. How do you account for the difference? In terms of convictions, there are more related to alcohol. What factors contribute to the drug-related convictions? How do we ensure that there are more apprehensions and follow-up on that?

Mr. Raf Souccar: I think you have a greater number of alcohol-related convictions and charges laid simply by virtue of the fact that we have a mechanism by which to determine the impairment by alcohol. We have the roadside test, the breathalyzer and so on, and our police officers were always trained in alcohol-impaired driving, not drug-impaired driving.

So I believe that with the drug recognition expertise, standardized field sobriety testing, and all the training that Evan is conducting across the country, it will create a greater ability for our police officers and this legislation will then give them the tools by which to be able to interdict drug-impaired drivers, and I think you'll see the numbers go up.

I know there will be a greater number of prosecutions for drug-impaired driving and a reduction, hopefully, in the injuries and deaths on our roads and highways.

Ms. Anita Neville: I'll leave it at that today. Thank you.

The Chair: Thank you very much, Ms. Neville.

Thank you very much for appearing before us this morning. We'll get back to you.

Officer Graham, you make reference to some studies from California. Would you be able to provide us with copies of these?

Mr. Evan Graham: Yes, I can.

The Chair: Thank you very much.

I'll suspend for one minute while we change our witnesses.

Mr. White.

Mr. Randy White: Mr. Chairman, there are so many more questions that I think we need to talk to the police once again. I think you should invite them back.

The Chair: I make reference to that. We'll see if we can squeeze it in.

Mr. Myron Thompson (Wild Rose, CPC): When would that be?

The Chair: We have a full schedule until June 23. We may have to have a new—

Mr. Myron Thompson: In the fall.

•(1005)

The Chair: Perhaps we would have an extra meeting if you like.

Mr. Randy White: We may just have to do that and live with it.

Mr. Myron Thompson: Mr. Chairman, what I'd like to point out is that we have ten people on this committee and only half of them got to ask questions. It's not about parties. It's about individuals who are here to try to get some answers to their particular questions.

I think we need to restructure things a little differently.

The Chair: It all depends. Sometimes we have witnesses who are asked a lot of questions and at other times we don't. So if it were a balance—

Mr. Myron Thompson: That's fine, but—

The Chair: In this situation, we've asked them to come back and they've agreed.

I appreciate your comments.

We'll adjourn for one minute.

•(1005) _____ (Pause) _____

•(1009)

The Chair: I'd like to reconvene the session.

We have with us this morning our Privacy Commissioner, Jennifer Stoddart. Ms. Stoddart, we'd like to invite you to make a presentation, to be followed by questions by our committee members.

Thank you very much for coming here.

•(1010)

Ms. Jennifer Stoddart (Privacy Commissioner, Office of the Privacy Commissioner of Canada): Thank you very much, Mr. Chair, for the invitation on this beautiful morning on this extremely interesting and complex subject.

[*Translation*]

Thank you for inviting us to appear before this committee to comment on Bill C-16 which proposes amendments to the Criminal Code as it relates to impaired driving. This is an issue my office has not had an opportunity to comment on in the past and we welcome the invitation to raise our concerns about the proposed amendments and their impact on the privacy rights of Canadians.

With me today is Patricia Kosseim, our general counsel, to assist in addressing any legal questions.

I would like to preface my comments by stating that my office acknowledges that there is a problem of impairment and road safety in Canada. Almost 3,000 people are killed every year in Canada in motor vehicle accidents and we know that alcohol plays a role in a significant number of these accidents. There is also some evidence that drug impairment plays a contributory role in motor vehicle accidents, particularly when combined with alcohol.

We support the intent of this bill to make our roads safer and to protect Canadians against the effects of impaired driving. However, as we will discuss, we have some concerns about the way in which this bill proposes to address the problem.

[*English*]

Before discussing the specific provision in the bill, I would like to step back and comment on the larger societal problem that underlies this bill.

While we have a tendency to associate the term “drugs” with marijuana, cocaine, and other illegal drugs, many prescription drugs and even over-the-counter drugs can affect our motor skills and reduce reaction times. Most of us at one time or another take drugs

that could affect driving performance. I think this is worth keeping in mind as this legislation moves forward.

I'll turn now to the specific provisions of Bill C-16 as we understand it.

We understand there's basically a three-step process to determine drug impairment under this legislation. First, if a peace officer has reasonable grounds to suspect that a person operating a motor vehicle has taken drugs, the person can be asked to perform certain roadside physical coordination tests. Then, based on the way in which the person performs these tests, if the officer has reasonable grounds to believe the person is impaired, the officer can demand that the person submit to an evaluation conducted by a qualified drug evaluation expert at a police station. Finally—the third step—based on this evaluation, the officer can demand that the person provide a sample of either oral fluid, urine, or blood to determine whether that person has a drug in his or her body.

In general terms this is similar to the process that is used to assess impairment by alcohol, with one significant difference. The difference, of course, is that a person suspected of alcohol impairment would be asked to submit to a breathalyzer test. A breathalyzer test is much less intrusive than requiring someone to provide a bodily fluid. As well, a breathalyzer test is a much more accurate way to measure impairment.

I'd like to go on and talk about some of the problems in assessing drug impairment. Problems about assessing drug impairment go to the crux of our concern with the bill. While the use of approved breathalyzer tests is a method of measuring the level of blood alcohol and has withstood numerous legal challenges, and the relationship between blood alcohol levels and impairment is well established, there is no generally accepted objective method of assessing drug impairment, nor is there a consistent established correlation between concentration of a drug detected in one's system and impairment.

•(1015)

[*Translation*]

A 2003 Department of Justice consultation document recognized the serious limitations of drug tests:

Forensic scientists have advised that drugs, unlike alcohol, are often extremely difficult to link to a particular concentration level that will cause impairment in the general population of drivers. Moreover, analysis for some drugs in certain bodily fluids may simply indicate drug use many days, or even months, in the past.

The 2002 report of the Senate Special Committee on Illegal Drugs also emphasized that the presence of drugs does not necessarily mean that they caused the accident:

simply finding traces of cannabis in drivers involved in accidents is not necessarily a sign that its use was the cause of the accident.

These observations raise serious questions about the effectiveness and the proportionality of the measures that are being proposed.

As privacy commissioner, one of my mandates is to oversee the Privacy Act that governs the collection, use and disclosure of personal information by government departments and agencies.

[English]

One of the fundamental fair information principles underlying the Privacy Act is that personal information should not be collected unless it can be used to achieve the specific purpose for which it has been collected. Forcing people to provide bodily fluids is intrusive. The intrusion is compounded when the samples cannot with confidence be used to measure impairment. Bodily fluids can be used to detect past use, but past use does not always prove current impairment. Collecting and testing bodily fluids may simply result in the collection of potentially stigmatizing personal information without furthering the goal of detecting drug-impaired driving.

If, despite the concerns I've raised, the government decides to move ahead with this legislation, the bodily fluids that are collected and the results derived from the tests of these samples must be adequately protected. For example, will information about a conviction for impairment caused by a mixture of alcohol and drugs be listed on police computers that will be accessible to other police forces in Canada or abroad?

Given the sensitivity of the information and its potential to reveal the use of non-prescription drugs even if such use did not result in impairment, it is absolutely essential that the use and the disclosure of this information be tightly controlled and that it not find its way into databases that are used for non-law enforcement purposes or shared with other countries that may have a lower standard of privacy protection than our own. It is imperative that impaired driving investigations not be used as a back door to identify users of illegal drugs and illegal prescription drugs.

We are pleased that the legislation that is before you limits the use and disclosure of such information to impairment investigations. However, the bill does not contain any provision regulating the period of retention of any bodily substance taken under the impaired driving provisions, and we suggest that this should be rectified in the legislation.

[Translation]

I will now conclude with a few final remarks.

Mr. Chairman, in closing, I want to be perfectly clear. Drug impaired driving is already a Criminal Code offence that can result in penalties up to a maximum of life imprisonment if it causes the death of another person. I'm not suggesting that drug-impaired driving should not be dealt with forcefully. Drug-impaired driving is a real problem. It is also a complex problem that calls for a thoughtful response.

The government should explore a multi-pronged approach aimed at educating the public about the causes and consequences of drug-impaired driving coupled with research into the effects of drug use on performance and impairment.

If the government chooses to proceed despite concerns, it should at a minimum include a clause mandating a three-year review of the

act. This would provide assurances to the Canadian public that the legislation will be reviewed while providing the opportunity to collect sound evidence about the extent of the problem and the efficacy of the measures that have been introduced to address the problem.

As I have mentioned earlier, I also recommend that the government include a provision regulating the period of retention of any bodily substance taken under the impaired driving provisions.

● (1020)

[English]

In closing, I would urge the committee to carefully consider privacy concerns and to ensure that any solutions that might be adopted to address the problem of drug-impaired driving are clearly justified so there's not a continuing erosion of the protection of our sensitive personal information.

I thank you very much for your attention during this presentation. I would be happy to take your questions.

The Chair: Thank you, Commissioner Stoddart.

A five-minute round, Mr. Breitzkreuz.

Mr. Garry Breitzkreuz (Yorkton—Melville, CPC): Thank you, Mr. Chair.

I thank you very much for coming before the committee. I appreciate your testimony and I think it's very important.

This is just on the last part you mentioned, before I go into my other questions. If in drafting this legislation the government does not respect your concerns as to the privacy violations that may occur, is there any onus on them to correct this in the legislation, or can they simply disregard your advice?

Ms. Jennifer Stoddart: I'm not sure I understand your question, honourable member, but as a matter of law, Parliament is supreme. You can decide what is in this legislation. That legislation could eventually be contested before the courts and parts could be struck down, but I am an ombudsman who advises Parliament and the government, and you can take that advice or not.

Mr. Garry Breitzkreuz: So if you raise concerns and this is taken to the courts, it could be struck down because of privacy violations.

Ms. Jennifer Stoddart: It could be, depending on what is in the legislation in its final version and depending particularly, I would think, on how it's administered. Our submission is necessarily rather short, but in the administration of the various tests, it would seem to me, there may be areas that are more sensitive and that would be therefore more vulnerable to challenge. This would be because of the subjective aspects of it and the issues of the link between the type of legislation that is proposed and what we seem to know about causality in impaired driving. That, I think, is a possible area where this could be challenged.

Mr. Garry Breitkreuz: Another thing you mentioned near the end of your presentation was that if an officer is doing a roadside check on someone and finds the person is using illegal drugs—they're in a public place—they cannot charge them if that's not the reason the person was stopped. Is that what you're suggesting, that this is a violation of privacy rights? Can you explain why that is the case?

Ms. Jennifer Stoddart: One of the tenets of privacy principles, including our own privacy legislation, is that you don't use information gathered for one purpose for another purpose. In fact, this act says the evidence gathered in administering tests for impairment will not be used for other purposes. That, I think, may be something different from having a certain set of facts to which a police officer could reasonably apply different parts of the Criminal Code. But I am not a criminal law expert, so I would think other people could advise you better on that.

Mr. Garry Breitkreuz: Let me be clear on that. If someone is stopped on suspicion of drug impairment, and the test shows that they are using an illegal substance, could they not be charged?

Ms. Jennifer Stoddart: My understanding is that under this legislation, if they go through the test—and the tests consist of several steps—what's being ascertained is whether there's evidence to charge the person with impaired driving resulting from drugs or a mix of alcohol and drugs. It's not my area of expertise, but my understanding is that if a police officer, in front of a given set of facts, notices other facts, the police officer could then apply other parts of the Criminal Code. As I say, though, I am not the person to advise you on this.

• (1025)

Mr. Garry Breitkreuz: If they are doing a routine check for alcohol impairment and they find something else in the vehicle that shouldn't be there, it seems to me they're able to charge that person. Maybe they've got some contraband or other illegal possessions in the car.

The Chair: Perhaps those questions would be better answered by the justice department.

Ms. Jennifer Stoddart: I understand the same thing as the honourable member. If they stop a person under the appropriate dispositions of the law, and they find illegal drugs, they can then apply the provisions that deal with possession of illegal drugs. One does not preclude the other. Our concern has to do with the evidence coming out of those tests, how it is subsequently used.

Mr. Garry Breitkreuz: The police told us that tests are accurate 85% of the time. This would raise a concern that a completely innocent person could have his character ruined by some unfounded charge of drugged driving. What concerns would you have in this

area? Is there something you would suggest to prevent this kind of thing?

Ms. Jennifer Stoddart: This goes to the heart of some of the questions we raised. Surprisingly, when our staff went to research this, they found there is not the certainty of causality that we've been able to establish in impaired driving due to alcohol levels. This opens a whole range of concerns—privacy, stigmatization, and so on.

I didn't know that it was only 85% accurate. That adds to our concern about the legislation and, if it goes forward, the care with which it's going to be administered. Clearly, to get a conviction, it would have to go before a court, and presumably the defence could raise these kinds of issues.

We suggest amendments about the conservation of the information coming from these drug tests. If we find, with more knowledge, that some of the tests are not reliable, given the state of scientific knowledge at the time, we want to make sure the information could be corrected after the fact. We would want to ensure that this information is not used indiscriminately. We also suggest that this committee add an amendment that says that you should review the legislation after three years. It could be either a sunset clause or a review clause, but I urge this on you because I think it would be prudent, given the developing state of knowledge on drug use.

Mr. Garry Breitkreuz: Excellent suggestion.

The Chair: Mr. Ménard.

[*Translation*]

Mr. Serge Ménard: Let me first congratulate you for your suggestions. You have provided a different viewpoint which, in my opinion, complements what we already have. I see that you also advocate the basic objective which is to reduce the number of accidents and related injuries. Moreover, you are asking that whenever possible, the measures respect certain fundamental values as well as our rights, including the right to be protected from criminal charges.

To that, I would add, for my colleagues, that if, in our legal system, an accused cannot be compelled to provide a statement, he must still tell the truth. That person will be in an untenable position if he has to choose between lying or incriminating himself. I don't think that anything you have reviewed would limit the use of a drug analysis that would only serve in the case of drug impairment.

• (1030)

Ms. Jennifer Stoddart: I thought it was in the legislation itself.

Mr. Serge Ménard: You say that if the government decides to go forward in spite of the concerns that have been expressed, samples of bodily fluids as well as the test results must be adequately protected.

What extra protection do you suggest?

Ms. Jennifer Stoddart: I believe that your concerns relate to sections 258.1(1) and (2) as set out in clause 8 of the bill.

We should perhaps have stated that more clearly, Mr. Ménard. What we mean is that, in the part dealing with the regulations, the act does not state under what conditions the samples will be held or used once they are stored. Where will they be stored? Where will they be held? How will their use be regulated, etc.?

We suggest that this matter be dealt with through the regulations.

Mr. Serge Ménard: You also said:

It is imperative that impaired driving investigations not be used as a “back door” to identifying users of illegal drugs and illegal prescription drugs.

Could you explain your concern?

Ms. Jennifer Stoddart: Yes. It is a matter of respecting the traditional approaches to privacy protection. If you obtain information by forcing people to submit to these impairment tests, then this information must not be used to determine whether or not that person might have committed another Criminal Code offence.

That is the essence of privacy protection. It is also what is meant by the clause that I cited earlier.

What is done with these samples, and with the analysis results? All legal proceedings aside, what happens at the police station, within the law enforcement system, once they have these tests? I believe this is a very important issue that should be covered by a specific regulation.

Mr. Serge Ménard: I confess that I feel a little uncomfortable this morning because, for some reason, I did not receive the text of the bill that we are examining. I would have liked to read it.

If someone gives a blood sample in which marijuana or even cocaine is detected, even though it appears that cocaine enhances rather than impairs one's performance—at least that is what people think—that person should be told that the sample will not be used against him, except in the case of impaired driving.

Ms. Jennifer Stoddart: Clause 8 of the bill would amend section 258.1 as follows:

(2) No person shall use the results of physical coordination tests [...] or the analysis of a bodily substance taken under [...] or with the consent of the person from whom it was taken, except:

a) in the course of an investigation of an offence under section [...]

We see here that the legislator took care in limiting the use of the evidence to the specific offence, in order to prevent the possible use of the evidence within a broader police operation related to other prohibited substance offences.

We support...

• (1035)

Mr. Serge Ménard: Thank you.

[*English*]

The Chair: Thank you.

Mr. Comartin.

Mr. Joe Comartin: Madam Commissioner, just to follow up on the suggestion of the three-year review, I have some concerns about whether we would have sufficient data in a project such as this by the end of three years, and the impact it could have across the country, as opposed to having a review, say, after five years.

Have you done any analysis as to why it should be three years as opposed to five?

Ms. Jennifer Stoddart: No, we haven't, honourable member. What struck us, or what struck me certainly, in reviewing the situation is the fact that in spite of our concern, in spite of the high correlation between the presence of drugs in bodily fluids and so on and fatal automobile accidents, we don't have clear patterns of linkage, we don't have clear patterns of correlation, and we don't seem to know very much about the various substances, illegal or prescription, and so on. So I saw no reference to anything that could help you determine whether three or five years is more appropriate, although other witnesses perhaps could help you.

In many scientific areas, scientific knowledge changes very quickly, and one would hope that if this legislation were to pass with the problems it has, one of the byproducts might be the beginning of more data that could help the committee review it.

Mr. Joe Comartin: In your analysis of the legislation, have you come across any jurisdictions that have attempted to fix objective standards—i.e., if you have this much THC in your blood, or this much heroin, all down the line? Have you seen any jurisdictions that have attempted to do that, as we have with alcohol?

Ms. Jennifer Stoddart: We looked over the jurisdictions, but I don't remember seeing a clear standard emerge. Different countries have gone about trying to define the problem in different ways, but I haven't seen in any country one substance correlated in a certain amount to a prohibited level, such as with alcohol. If we find one, we could inform you.

Mr. Joe Comartin: Yes, perhaps you could let the committee know. Thank you.

With the other amendment you're proposing, at least in a general way, on the destruction of the samples, my thinking is that it might be necessary to have different criteria: if there is no charge flowing from the results of the sample, if there is an acquittal, or if there is a conviction. Have you done any analysis on that type of criteria, for each of those stages?

Ms. Jennifer Stoddart: No, we haven't, but I would agree with you; we make that as a general suggestion, but clearly I think a lot of thought should go into it. That's why we suggest that perhaps you put this....

There's an article that deals with regulations, and if you put this under added regulatory power, then you could get experts who draft appropriate regulations, adapted to scientific evidence and so on. Sometimes we're consulted on regulations, and perhaps at that time we could contribute further, if it were possible.

Mr. Joe Comartin: I would say back to you that this would be an unusual way of doing it. Normally, at least in the legislation I've seen, especially in the criminal area, those provisions would be right in the code rather than under some regulatory piece.

Those are all the questions I have, Mr. Chair.

The Chair: Thank you, Mr. Comartin.

Ms. Neville, five minutes, questions and answers.

Ms. Anita Neville: Thank you very much.

Thank you for coming, and thank you for your suggestions.

When you talk about privacy and charter rights, and the proportionality of the bill, what are your greatest concerns? Are your concerns related to actual DRE testing, or information sharing, or the retention of the sample? What are your primary concerns here?

Ms. Jennifer Stoddart: Our primary concern is the infraction itself, the fact that these are compulsory measures. They have great consequences on one's criminal record in terms of fines, imprisonment, and so on. They force people to give bodily substances, which is inherently a privacy-invasive measure, on the basis of scientific evidence that is inconclusive at the present time. So there's a real question as to whether or not this legislation is premature.

The position I'm taking with you this morning is that doubtless because of the concern, Parliament will go ahead with this legislation, so we're trying to make practical suggestions for it. When you read the evidence that seems to be available from all sources, whether it's the Canadian Medical Association, the Senate report, or the Department of Justice report, this is a very amorphous area.

As one of the honourable members said, the police have told us that even these tests now are only accurate 85% of the time—which is another issue—in showing what they're supposed to show. So we're in a very grey zone. As Privacy Commissioner, I'm concerned that the approach is far too rigid for the mist that has settled over this question, which we haven't yet dispelled.

Then, of course, I could have additional concerns as we apply the law. It is clearly very important for the privacy rights that the officers be properly trained, that the tests be done with scientific rigour, that the expert witnesses thoroughly understand what they can testify, and so on. I'm not sure we have a body of witnesses across Canada who are really familiar with this, from some of the jurisprudence we've looked at. It doesn't seem as a society we have developed a lot of expertise on the link between different kinds of drug uses and impaired driving.

•(1040)

Ms. Anita Neville: I'm assuming this could potentially lead to charter challenges.

Ms. Jennifer Stoddart: I would think so. I think the Canadian Bar Association, which submitted a brief to this committee, has raised some of those issues.

Ms. Anita Neville: Do you have any other suggestions for us, based on what you've said just now, other than what you've put into your brief?

Ms. Jennifer Stoddart: I think you should consider very carefully whether passing this legislation at this time is the best way to counter impaired driving.

I make suggestions for other measures, including public education, awareness, and so on. On further research, I'm not sure how you make the link between a House of Commons committee and research where this is done, and so on. It's really quite remarkable that we don't seem to have a better handle on how the use of different drugs affects our driving skills, when most adults now drive daily in our society.

Ms. Anita Neville: Thank you very much.

The Chair: Thank you, Ms. Neville.

Mr. Thompson.

Mr. Myron Thompson: I'm going to share my time here.

Just really quickly, help me understand. You can be compelled to give a breathalyzer. If you don't give a breath test you can be charged. Under this bill, is it correct that if you don't give a bodily fluid you can also be charged?

Ms. Jennifer Stoddart: Yes.

Mr. Myron Thompson: Is that what you object to or are concerned about particularly?

Ms. Jennifer Stoddart: We're raising the issue that giving a breath sample is a less physically intrusive measure than being asked to give blood, urine, or oral fluid.

Mr. Myron Thompson: That's your opinion.

Ms. Jennifer Stoddart: That's our opinion. It's generally considered. If somebody asked me to do that, I think it would be more intrusive to do that than to breathe into a balloon.

Mr. Myron Thompson: On your other concern, just so I've got it straight in my mind, I'm a police officer and I've taken this guy off the street. I've forced a urine sample. By the way, he's a pretty shady-looking character. I wonder if I shouldn't do some checking with the DNA bank to see if there's anything in there on this guy—do some comparison. Is that what you're thinking could get out of hand?

I'm trying to get the picture of what's really troubling. To me, you could be suspected of driving under the influence. You get out of there and provide a sample. That's the law, period. So what above that makes so many people nervous?

•(1045)

Ms. Jennifer Stoddart: I think our overriding concern is the issue of causality, that these procedures are compulsory. And probably the procedures you are referring to that you yourself administered were the ones for alcohol, where I think there is clear scientific evidence, which has been accepted, that 0.08 is an intolerable limit.

Alcohol—I understand perhaps you know more about this from your firsthand experience—whether you drink beer or gin or Cointreau, is going to have the same effect. Therefore, we have a universal standard that sorts itself out for different body metabolisms and so on. We can rely on this as a test for saying whether you're a danger on the roads with that amount of alcohol in your blood.

The problem we see with this legislation at this time is that, unfortunately, drugs, including the correlation between prescription drugs, which I may be taking on the advice of my doctor for things like the rate of my insulin and whether my insulin fluctuates, are a far more complicated area. So to take even more, shall we say, severe privacy-intrusive measures in a less clear context is the issue we want to bring to your attention.

Mr. Randy White: Ms. Stoddart, on page 10 of your presentation, you say, "For example, will information about a conviction for impairment caused by cannabis, be listed on police computers that will be accessible to other police forces in Canada or abroad?"

I say the answer to that is yes, and I'd like to know what your concern is.

Ms. Jennifer Stoddart: Our concern is that generally the police are moving to standards of interoperability, that in refining their information handling systems, their computer systems, we're going to standards that can be shared not only across Canadian jurisdictions but also outside, beyond our borders, in certain circumstances.

I think, as Privacy Commissioner, that Canadians should keep a handle on where their sensitive personal information is going. It's one thing to be in the computers of the police force that actually took the test and so on, but we have to keep a handle on who else may be reading this information. If I am outside of Canada and somehow all my records are read in another jurisdiction—

Mr. Randy White: You're suggesting here that CPIC, for instance, shouldn't have this information: "accessible to other police forces in Canada".

Ms. Jennifer Stoddart: I'm raising the question. I'm not making a specific comment about CPIC. I'm raising a question about the circulation of personal information, notably beyond Canadian borders, and the privacy invasions that could result if we do not set clear standards about that.

Mr. Randy White: You also suggest on page 5, I think it is, "a breathalyzer test is a much more accurate way to measure impairment". The police, before you, said just the opposite, actually. They said that bodily fluid samples are in fact much more accurate than breathalyzer tests.

Could you explain why you are at odds with the police on this statement?

Ms. Jennifer Stoddart: Well, perhaps I should stand corrected. I don't know. The research we had suggested that a breathalyzer test was more accurate, but I don't have personal information on that. I would bow to whatever is the best scientific evidence. The research that my staff did told me that a breathalyzer test was more accurate, but....

The Chair: Monsieur Ménard.

[Translation]

Mr. Serge Ménard: I will skip my turn.

[English]

The Chair: Mr. Comartin.

Mr. Joe Comartin: I'm fine, thank you.

The Chair: Mr. Cullen.

Hon. Roy Cullen: Thank you, Mr. Chair.

Thank you, Ms. Stoddart, for coming back again.

On the question of having an offence on someone's record on the CPIC, my understanding is that if someone was convicted of driving while impaired, that's all the record would say. It wouldn't say "impaired because of drugs" or "impaired because of alcohol". If that is the case, would that alleviate some of your concerns?

Ms. Jennifer Stoddart: Yes, it would. I'm not sure—I don't have personal knowledge and I don't think we're familiar with it—what the information is on CPIC.

We're coming back to a theme, honourable member, that we've explored, and we're exploring in other situations, about thinking carefully about the details of personal information that is accessible online to broader and broader groups of officials, shall we say, and the particular implications for Canadians who may be travelling abroad.

• (1050)

Hon. Roy Cullen: Thank you.

You and your office have a single mission of protecting the privacy rights of Canadians. There's nothing in your legislation that requires you to look at the balance required between privacy and, let's say, peace, order and good government, or just public safety. I guess that would be up to parliamentarians, in your judgment, the way that your mandate is struck. You're not required to do any sort of balancing of the risks and benefits of privacy versus public safety, for example, in this case. Is that correct?

Ms. Jennifer Stoddart: It's not specifically written into our legislation, which predates the charter and the Privacy Act. But I think my duty is to interpret the Privacy Act in a way that takes into account Canadians' other rights, as do the courts.

Hon. Roy Cullen: So there's meant to be a certain level of pragmatism there, rather than just surfacing.... Every time the state intervenes in the lives of citizens, invariably there is some issue around privacy of information. But are you required, in terms of the way you understand your mandate, to balance privacy interests against other competing objectives of the government?

Ms. Jennifer Stoddart: I think I'm required to take the other rights into account, in trying to advocate optimal privacy rights for Canadians. The ultimate balancing is done either by Parliament or the courts, as the case may be. I am an advocate for privacy, but I think I have to make a realistic case for privacy, and that involves taking into account other rights that citizens wish to continue to enjoy.

Hon. Roy Cullen: The reason I raise it in this context is that if we have people who are drinking and driving and causing public safety risks, then as individuals move from alcohol to drugs, as night follows day, it seems to me we should be making sure we have regimes in place to be able to test for that.

I guess your argument is that the tests aren't reliable enough or that different drugs would cause different challenges, in the sense of assessing whether they were a public safety risk. But the police officers who were here earlier said that there was about a 95% reliability rate with respect to cannabis. I think the 85% you quoted had to do with some averages in the United States, which depended on what levels they cut off, etc. That was my understanding.

I guess my problem with delaying something like this is that... You heard the case of our previous witness, Mr. Palk, who was a victim of an impaired driver. We're putting more Canadians at risk. You or I could be struck by some driver who's doped up on marijuana or cocaine, or something, and I think Canadians expect us to act.

I must say that having these sunset reviews... Just for the various legislation this committee deals with, we're looking at so many reviews in three to five years. It seems a little tentative, frankly. I think we should have the courage of our convictions and do what we think is right. The Parliament has an opportunity to review anything at any time. I'm just concerned that we're going to be inundated with reviews of legislation, when we should just act as parliamentarians and say that this will be the law—and it could be challenged or reviewed at any point in time.

The Chair: Thank you, Mr. Cullen.

Hon. Roy Cullen: Would you like to comment on that?

Ms. Jennifer Stoddart: Well, yes, I guess that's the choice before you. I'd just like to point out to you that in my written remarks, I acknowledged very clearly my concern with the statistics on impaired driving, with the fact there is a high percentage of fatalities where drugs are present in the system, and so on. Certainly this is cause for concern. I personally am concerned about this.

I have also taken the position in my remarks to you today that you are going to move ahead because of Canadians' concern about this. So I'm trying to make realistic remarks and I am therefore tempering privacy with other charter values, that of the integrity of the person and security of the person, to suggest how, in going forward—as you doubtless will with this legislation—you can be mindful of how it could be misused, how it could go beyond its original mandate, and how it could have very serious effects on the privacy of Canadians in certain circumstances.

•(1055)

The Chair: Thank you, Commissioner.

Mr. Warawa, you have the final word, and I'll have to hold you to the time.

Mr. Mark Warawa: Okay, I'll make this quick.

This is just a quick point. On page 5, you have “drug evaluation expert”. It's DRE, drug recognition expert.

Commissioner, the way this plays out is that a police officer will see somebody driving in an erratic manner, arousing suspicion that the person is impaired. They may have a health problem, which causes an impairment. They may be falling asleep, which is

impairment—lack of sleep. It could be from use of a drug, prescription or illegal. But there is dangerous activity on the road. That's why they're being pulled over and given a sobriety test. If they fail the sobriety test, they're no longer safe to be on the road.

Now it's to determine whether it's alcohol or drugs. They take them to the detachment to find out from a drug recognition expert, a DRE, whether or not indeed that person is impaired with a drug. These experts can tell whether or not there's an impairment and what drug caused it. If it's crystal meth and they've been on this high for a number of days and they're coming down and they're tweaking, and it's being camouflaged by a little bit of alcohol, it takes these experts to be able to tell that. But they're not safe to be on the roads. That's where this is taking us.

I thank you for being an advocate for our privacy, but there has to be a balance. Canadians are not there to serve the law; the law is to serve and protect Canadians. We have to keep that in mind.

So I appreciate your comments, but I believe Bill C-16 is a tool that the police will use, and not abuse. To provide a body sample is not intrusive, in my opinion. You spoke on DNA and you said it was intrusive. I could buy that argument, and we addressed it. But these samples are not being stored in a bank in Ottawa. These are samples to determine whether or not there is impairment, and we want to protect Canadians.

The Chair: Thank you, Mr. Warawa.

Do you have a comment, Commissioner?

Ms. Jennifer Stoddart: I tried to tailor my remarks to the concerns of Parliament and Canada with the issue of impaired driving. I find your examples interesting, because we think this bears on the research and experience we need to gain about the correlation between different types of substances and their presence and impaired driving, so that we can pinpoint what is unacceptable behaviour and zero in on it.

As for the storing of things in a bank in Ottawa, that's part of what we're trying to bring to your attention. The bill does not address what is happening to the samples, and so on, and this might be something you want to consider, that there are parameters around what happens to the samples and how they are used. They're doubtless of great interest.

The Chair: Thank you very much, Commissioner, for your appearance here today.

Thanks, members, for the questions.

We look forward to seeing you on Thursday.

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