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Chair

Mr. John Maloney

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● (0905)

[*English*]

The Chair (Mr. John Maloney (Welland, Lib.)): We have quorum, so I suggest that we start, because we have some other business we should conclude before the end of the meeting. We also have to be out of this room at 11 o'clock, so we don't have any possibility of slippage.

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): And we have a motion.

The Chair: We have your motion, and we also have a request by Mr. Toews for a motion, so we'll have to schedule that. I suggest we start. Let's hope to adjourn this meeting about 10:45 or 10:50 to deal with Mr. Marceau's motion. Do you think that would be sufficient time? Actually, we've dealt with your motion; it's just a question of electing the chair and putting forth the nominees.

At this time I will thank Mr. Jeffery for appearing from the Canadian Society of Forensic Science, and Mr. Kwei Quaye for appearing from the Canadian Council of Motor Transport Administrators. I'm sorry for the mispronunciation.

I'll ask Mr. Jeffery to open. Generally it's a presentation of approximately 10 minutes. Then we'll hear from Mr. Quaye. Then we'll have questions and answers, five minutes each, as we go around the table here.

Mr. Wayne Jeffery (Chair, Drugs and Driving Committee, Canadian Society of Forensic Science, Vancouver Forensic Laboratory): Thank you very much.

It's well known that substances other than alcohol can cause impairment and impaired driving. Two published articles by the Canadian Society of Forensic Science Drugs and Driving Committee, "A Report on the Incidence of Drugs and Driving in Canada" and "The Involvement of Drugs in Driving in Canada: An Update to 1994", outline the type of drugs found in fatal motor vehicle accidents and those drug-impaired driving cases in which blood was obtained.

Two classes of drugs, namely cannabis and the benzodiazepines, far outnumber the rest in the drugs and driving context. In 2003 Transport Canada published a report titled "Impacts of Cannabis on Driving", which states "The evidence is very clear that a moderate or higher dose of cannabis impairs driver performance and several of the skills necessary for safe driving".

The extent of drug-impaired driving in Canada has well been underestimated because of the handicap the present law puts on police officers. The published article "Alcohol, Drugs and Impairment in Fatal Accidents in B.C." addresses this issue. This article showed that 9% of all fatal motor vehicle accidents in British Columbia were caused by drugs alone and another 10% were caused by the combined effect of small amounts of drugs and small amounts of alcohol. Do the fatal motor vehicle accident data from this and similar articles allow general assumptions to be made about drug-impaired driving? Certainly, the international scientific literature has shown that between 10% and 40% of impaired drivers with blood alcohol concentrations of less than 100 milligrams per 100 millilitres are impaired by drugs.

Under the current law, paragraph 253(a), drug-impaired driving is an offence in Canada. Currently, however, police are severely impeded in respect of gathering the evidence required to support an impaired-driving charge. Thus, there is little likelihood of a conviction in instances of drug-impaired driving as the law stands. The police officer must show impairment and the presence of drugs active in the body. This can only be accomplished by two means: roadside sobriety testing and a body fluid demand to show the presence of the drug in the body. The present law does not allow a police officer to demand sobriety testing or demand a body fluid sample.

Concerning impaired driving due to drugs, no per se law, as with alcohol, exists. To prove drug impairment, the police officer requires the authority to conduct roadside sobriety testing and to demand a sample of an appropriate body fluid: blood, urine, or saliva. The Canadian Society of Forensic Science Drugs and Driving Committee does not support roadside urine or saliva testing for drugs by police officers. Such analyses should only be conducted in a forensic toxicology laboratory.

In the United States the issue of the drug-impaired driver has led to the establishment of the drug recognition expert program in most states. The DRE program, which was adopted by the National Highway Traffic Safety Administration in 1988 and is managed by the International Association of Chiefs of Police, represents a structured procedure for assessing suspected impaired drivers by detecting drugs and documenting symptoms of drug use and effects and provides a systematic framework for predicting the class of drugs most likely to be present in each particular case. The DRE approach establishes the necessary probable cause for the collection of a biological sample for toxicological testing, completing the major elements needed for a robust impaired-driving prosecution. This process is outlined in another article, "The Drug Impaired Driver: The Drug Recognition Expert Response". At present, 38 states use this process to detect and prosecute the drug-impaired driver. This program has been scientifically validated both in the laboratory and at roadside.

This process was implemented in the province of British Columbia with the support of the Insurance Corporation of British Columbia in 1995. It has been of limited success in terms of drug-impaired convictions due to the lack of field sobriety testing and body fluid demands. It has had great success in removing suspected impaired drivers from the road, however, through the use of the province's 24-hour roadside suspension.

The starting point for prosecuting the drug-impaired driver is not a set blood drug concentration limit but independent evidence of impaired behaviour obtained by standardized field sobriety testing and/or the drug recognition expert evaluation plus a laboratory finding, the latter to support or not support the assessment made as to the type of drug responsible for the observed impaired driver's behaviour.

● (0910)

To combat drug-impaired driving, it is the Drugs and Driving Committee's recommendation that the below-mentioned changes to paragraph 253(a) of the Criminal Code, as outlined on page 4 of the previously submitted article, be implemented.

We recommend that a body fluids—blood, saliva, or urine—demand for drug analysis be made only when all of the following conditions are met:

(a) A peace officer believes on reasonable and probable grounds that a person is committing, or at any time within the preceding two hours has committed, an offence under paragraph 253(a);

(b) That obvious and at times specific observations have been made of impaired physical or psychomotor functions or of driving behaviour such that there appears to be a marked departure from the norm with respect to the ability to operate or have care and control of a motor vehicle;

(c) That either roadside screening or evidentiary breath testing for alcohol has shown that the person's blood alcohol concentration is not in excess of the prescribed limit as prescribed in paragraph 253 (b).

In the context of the proposed changes to paragraph 253(a), it is assumed herein that selected police officers will receive specific training similar to that provided in the drug recognition expert program currently existing in the United States and that in addition the law will be amended to allow for roadside testing.

The proposed legislation would not capture those drivers who use medication correctly for therapeutic uses. Ethical use of drugs prescribed by physicians and dispensed and monitored by a pharmacist should not lead to impairment. Since the proposed legislation will detect abuse of both pharmaceutical and illicit drugs, its application should not be restricted to the latter.

Certainly, in addition to impairment caused by alcohol and other drugs, there are many medical conditions that may cause driving impairment; uncontrolled diabetes, epilepsy, and stroke are just three conditions. The DRE procedures are designed to help police officers identify medical disorders causing impairment. As a result, the DRE-trained officer, upon encountering an impaired driving situation involving a medical condition, would seek medical assistance for, rather than incarceration of, the driver involved.

The Drugs and Driving Committee of the Canadian Society of Forensic Science supports the recommendations of Bill C-16, and I've attached the scientific literature to go along with this.

● (0915)

The Chair: Thank you.

Welcome, Mr. Lomer.

Mr. Michael Lomer (Representative, Criminal Lawyers' Association): I apologize, Mr. Chair, but your traffic is getting as bad as Toronto's.

The Chair: We'll have Mr. Quaye give his presentation, and then you'll have up to 10 minutes.

Mr. Quaye.

Mr. Kwei Quaye (Chair, Strategy to Reduce Impaired Driving, Canadian Council of Motor Transport Administrators): Thank you very much.

Alcohol-impaired driving is a serious problem in every jurisdiction in Canada and kills hundreds of Canadians each year. Clause 8 of Bill C-16, as currently constructed, we believe, will aggravate the problem of impaired driving in Canada.

My presentation will be set out in three aspects. In the first I will talk briefly about the Canadian Council of Motor Transport Administrators. Second, I will talk about impaired driving and the response of CCMTA—the Canadian Council of Motor Transport Administrators—to impaired driving. Last but not least, I will talk about Bill C-16, and how we view it from CCMTA's perspective.

The Canadian Council of Motor Transport Administrators is a non-profit organization consisting of representatives of the provincial, territorial, and federal governments of Canada. Through the consultative process, it makes recommendations on administration and operational matters dealing with licensing, registration, and control of motor vehicle transportation and highway safety. It also includes associate members from the private sector and other government departments whose expertise and opinions are sought in the development of strategies and programs. CCMTA receives its mandate from the Council of Ministers Responsible for Transportation and Highway Safety.

Alcohol-impaired driving has been, and still remains, the leading contributor to traffic fatalities in Canada. In 1995, close to 1,300 people died in crashes involving a drinking driver. In 2000, 864 people died in crashes involving a drinking driver. In 2003, the latest year for which we have national statistics, 902 people were killed as a result of actions of a drinking driver. Overall, at the national level, 33% of all motor vehicle fatalities involved a drinking driver. No province or territory in this country is immune from this problem of drinking drivers.

CCMTA views this as a significant issue that requires ongoing attention. In 1990, the Council of Ministers Responsible for Transportation and Highway Safety approved and directed CCMTA to proceed with programs to reduce by 20% the percentage of traffic fatalities involving impaired drivers by 1995. To achieve this target, CCMTA established a strategy to reduce impaired driving, which I will henceforth refer to as STRID. This was a joint initiative by federal, provincial, and territorial governments, as well as other safety organizations in Canada.

STRID was initiated in order to develop a common infrastructure and approaches to address the problem of impaired driving. During this first phase of STRID, we made significant progress in developing infrastructure to support further STRID initiatives. This included things such as four-year strategies in each jurisdiction to monitor impaired driving, establishment of coordinating agencies and interagency committees in the different jurisdictions, and coordinated enforcement and awareness programs.

This initiative was renewed in 1995 because the problem still persisted. We then cast it in the form of STRID 2001. The mandate at that time was to reduce by 20% the percentage of fatalities and serious injuries in Canada resulting from collisions involving drunken drivers by the year 2001. Progress during this period was slow but steady, and it resulted in reductions in the number of people killed related to impaired driving, despite steady increases in the number of registered drivers.

In November 2001, the STRID task force released its latest strategy to advance the fight against impaired driving. We now know it as STRID 2010. The strategy builds on the experience and lessons learned from the two predecessor strategies, as well as the national workshop we held on impaired driving. STRID 2010 has the target of reducing by 40% the percentage of road users fatally or seriously injured in crashes involving alcohol.

To achieve the objectives of STRID 2010, there are a number of recommendations and initiatives aimed at hard-core drinking drivers; new young drivers, social drinkers, and so-called first-sanction drivers. These initiatives we've categorized into areas of education and awareness, role of policing, policy and legislative initiatives, health promotion, building linkages, monitoring research and evaluation, and something that we call “other elements”, which includes the issue of drug-impaired driving.

● (0920)

STRID 2010 is a key component of a national road safety vision 2010, which has been endorsed by the Council of Ministers Responsible for Transportation and Highway Safety and is aimed at making Canada's roads the safest in the world.

CCMTA's national strategy to reduce impaired driving, STRID, provides Canadian jurisdictions with comprehensive tool kits of countermeasures to address the problem of alcohol-impaired driving. Some of the most important countermeasures in this strategy are the use of short-term administrative suspensions, such as 24-hour roadside suspensions or 90-day administrative suspensions. The majority of Canadian jurisdictions currently rely on these tools to manage alcohol-impaired driving and its consequences.

CCMTA believes there is sufficient evidence that drugs are also a significant issue; thus, we have the issue of drug-impaired driving. The need to address the issue of drugs and driving is explicitly recognized in STRID 2010. In fact, STRID has created a subgroup to examine the issue of drug-impaired driving and develop a strategy to address it. The group's scope includes impairment related to prescription, illicit, and over-the-counter drugs. The subgroup is currently working on the development of a strategy for dealing with the issue of drug-impaired driving. A first draft of this strategy is expected late in 2005.

In the meantime, the group has undertaken or participated in a number of projects to further its knowledge of this issue. CCMTA and Transport Canada co-sponsor the annual updating of the STRID fatality database, which collects alcohol use information on fatally injured drivers and pedestrians on Canadian roads. Beginning in 2000, the STRID fatality database project was expanded to include drug use information where such is available.

CCMTA, in view of this, supports the general direction of Bill C-16 in providing greater tools for police to effectively enforce existing Criminal Code drug-impaired driving laws and in strengthening and supporting the role of policing in the fight against impaired driving. However, CCMTA cannot support Bill C-16 in its current form because of its potential detrimental impact on the management of impaired driving at the provincial and territorial level. Clause 8 of Bill C-16, which will create a new subsection 258.1 in the Criminal Code of Canada, would have the effect of precluding the use of the results of breath tests, sample tests of blood or other bodily fluids, failed sobriety tests, and drug recognition evaluation tests, for the purposes of provincial and territorial sanctions under their respective highway traffic acts.

As currently written, the proposed section 258.1 prohibits the results of these tests for purposes other than criminal impaired-driving investigations. Provincial and territorial sanctions that are currently in place in the majority of Canadian driver-licensing jurisdictions—such as the 24-hour suspension, driver's alcohol-related admin licence suspension, and vehicle impoundment—are based upon test results such as breathalyzer or standardized field sobriety tests, rather than the laying of the charge under the Criminal Code. In its current form, Bill C-16 will prevent jurisdictions from using that evidence to remove impaired drivers from the road and render provincial or territorial driver's licence suspension and vehicle impoundment program laws ineffective.

CCMTA does not support Bill C-16 as currently proposed. If it proceeds as currently presented, we believe it will be a big step backward for the management of impaired driving in Canada, particularly in relation to drinking and driving. CCMTA recommends that the necessary changes be made to this bill to authorize the use of the results of breath sample tests, sample tests of blood or other bodily fluid, field sobriety tests, and drug recognition evaluation tests for the purpose of enforcement of provincial highway traffic laws.

In closing, I would like to make the following remarks on behalf of CCMTA.

● (0925)

CCMTA would like to emphasize that alcohol-impaired driving continues to be a lead killer on all Canadian roads.

CCMTA is of the view that Bill C-16 in its current form will undermine the efforts in every Canadian jurisdiction to deter and dissuade people from drinking and driving, thereby making Canada a fertile ground for drinking drivers. The outcome of this will be disastrous and a huge step backwards.

CCMTA applauds the federal effort to provide additional tools for police to monitor impaired driving, but as stated earlier, we cannot support the bill in its current form. The bill must be changed to authorize the results of blood or other bodily fluid sample tests, field sobriety tests, and drug recognition evaluation tests to be used for the purposes of enforcement of provincial highway traffic laws. This is the unanimous view of every Canadian jurisdiction.

Thank you.

The Chair: Thank you, Mr. Quaye.

Mr. Lomer, please.

Mr. Michael Lomer: Thank you very much, members of the committee.

Let me say at the outset that there's probably no area of the criminal law that brings together the Charter of Rights and Freedoms, the middle class, and police authority in as difficult a mix of circumstances as what I would otherwise consider law-abiding citizens driving and facing a police officer in, probably, their first experience.

I'm not here—please don't get me wrong—to try to refute anything my fellow panellists have said with respect to impaired driving and its consequences upon the people of Canada, but I will say this with respect to it: what you are authorizing here is a form of investigatory detention; you're going to detain people in order to investigate them for suspected criminal offences.

The Alcohol Alert, which is the breath alcohol machine, passed charter scrutiny in a case called Thompson about 15 years ago, and it passed primarily because there was a clear and obvious connection between alcohol and impairment and the consumption of alcohol and impairment, and that the reasonable suspicion that you had alcohol in your blood was a threshold the court could live with in determining whether or not investigatory detention was authorized. What this provision is now going to do is authorize an investigatory detention for a reasonable suspicion that you have a drug in your system.

Now, you don't define “drug” anywhere. I'd venture to say I have a reasonable suspicion that every member of this committee probably has a drug in their system right now. I haven't had my morning coffee, but possibly you have. I am not being facetious. No-Doz is a caffeine-related drug you can get across the counter that I've heard long-distance drivers occasionally use to make sure they don't fall asleep. Are they impaired by a drug; have they a drug in their system? The answer is yes. Any person who is on any type of medication that has no effect on impairment will still have a “drug” in their system.

Do you really want to put the threshold so low that you have no causal connection between impairment, as we do with alcohol, and the investigatory detention you're authorizing with this legislation?

I can tell you that I foresee this will not withstand charter scrutiny, because it's way too broad. You don't make any attempt to define “drug”. Is it a narcotic, a controlled substance within the Controlled Drugs and Substances Act? No, it's not. Even some of those drugs, I might add, don't show impairment. Anabolic steroids, for example, are controlled drugs, but they don't necessarily cause impairment—although they may have something to do with road rage; we're not sure of that.

What you've done with the threshold test—and this is probably my biggest single concern—is place the bar so low that even though the officer on the street sees no sign of impairment whatsoever but can ascertain that there's a drug in their system, he or she is free to embark on this investigative detention.

In relation to that, it's a criminal offence not to comply with the demands he makes right at the time. I'd like to address proposed subsection 254(5) as you presently have it in your legislation. We know that if a person fails to comply with a demand for an Alert, they can be charged with an offence. But now, if the person fails to comply with the SFST test, the standard field sobriety test, he or she gets charged with an offence. I ask you, was it the intention of Parliament that you were going to make somebody who may not be impaired, but may not be able to walk a straight line or get their nose touched in a proper way, a criminal because they failed to comply with the test?

● (0930)

I didn't think it was at first, but the wording of that proposed subsection makes it clear that this is a reasonable interpretation of the section, and I'd ask whether you really wanted to make that an offence, keeping in mind that it's what I'd almost call an inchoate offence. They don't get a chance to go to the station and get the 12-step testing we've heard about that goes on with an expert, a DRE. It's just right at the time: you failed the test; you get charged with an offence.

Was it our intention to criminalize that? My suggestion, and one that I think has fairly broad support, certainly in the justice system, is that you make it presumptive; that is, if you fail the test or refuse the test, it's not a criminal offence, but you get to go to the next stage, i.e., to the police station, to the breathalyzer, to the DRE. It would certainly, I think, lessen the risk of criminalizing that which was not meant to be criminal.

There's one other thing. The wording in the section got changed, and I'm just not sure why. We've been using “as soon as practicable” for as long as I've been practising law, 25 years. There's a well-known judicial gloss to it, that it means “as soon as reasonably practicable”. It's a fairly flexible term. I wonder why the legislation suddenly decided to take the “as soon as practicable” out and put in “as soon as reasonable”. Were they looking for another 20 years of litigation?

I have to tell you that our interpretation, from our courts of appeal, has been that “as soon as practicable”, or “as soon as reasonably practicable”.... I don't see that there's any real difference. But if you were expecting to gain more time for the officer...? I don't think that's necessarily what's going to happen, and I question the efficacy of changing your definitions mid-stream when there is already a fairly comprehensive, as I said, judicial gloss on it. I would certainly suggest to the committee that they might consider going back to the old wording. There is no magic in it. It will get the same result.

I think some of you have questions. Those are my opening submissions.

The Chair: Mr. Thompson, for five minutes?

Mr. Warawa.

Mr. Mark Warawa (Langley, CPC): Thank you, Mr. Chairman.

To start off, I'd like to thank each of the witnesses for being here and make a comment on the last presentation, Mr. Lomer's.

I think the scenario you paint is possible but extremely unlikely. Any extreme example could be used, but I don't see it as particularly practical. We're all open to discussion and amendments to tighten things up, but I think a typical use of Bill C-16, if it were to proceed, is that a police officer would see somebody who is driving in a dangerous manner. They're impaired, and that impairment is putting themselves and others on the road at risk.

In the scenario you painted, if I understand correctly, it's just random testing, demands for samples, demands for field sobriety tests. I don't think that is at all realistic. You're going to have somebody driving in a dangerous manner, and they're going to be pulled over. It is going to be determined whether or not there's an impairment. Is there a problem? Is it a medical problem? Is it a drug-related problem? They would then be doing a field sobriety test. If they believe there's a drug impairment, they're going to be taken back to the detachment, and there will be a DRE who will do a further test to determine whether it is drug impairment. These experts will be able to say whether it is alcohol, drugs, a medical issue.

If it is a drug impairment—an illegal drug impairment—there will be a demand for further tests. The goal of this is to make our streets safer; it's not to create a police state.

My question is for Mr. Jeffery. We have a threshold, and the threshold is 0.08% or 0.05%, for alcohol consumption. If we do not have a threshold for drug impairment—and for what drug, as has been pointed out—how do we determine whether or not that person is impaired? Are we saying that any drugs, even in minute amounts, are causing an impairment? And what degree is the impairment?

I think that's where the concern with Bill C-16 is. We've demanded to find out whether there are drugs in the system, but does that mean they're impaired? Are we relying on the DRE to determine whether there was an impairment?

● (0935)

Mr. Wayne Jeffery: That's a very good question.

With the DRE proposal, the way it's.... I have been involved with this program since 1995 in British Columbia. First of all, for a person to be stopped, they have to come under the gaze of the police officer for some driving offence. That has to occur first. Then the police officer will talk to the person to determine whether he thinks there is some reasonable suspicion that they are impaired by either alcohol or a drug. Once that decision is made, the person may be asked to perform field sobriety tests. At that point, the police officer has to make decisions with respect to whether he has failed or has passed the field sobriety test.

If he fails the field sobriety test, they will then go further to do the drug recognition evaluation; then the officer will determine a drug is in the system, and it may be causing the impairment shown by the field sobriety test. The third leg, which is very important, is the body fluid demand, to determine whether that drug the police officer calls is there.

So you really have three safeguards: you have to have a driving offence, you have to show field sobriety test failure, and have to have the drug within the system—all of those things. In the case of a person who is, under the guidance of a medical doctor, taking prescription drugs, this will not happen, because they will not show the impairment in the driving. They will not show the impairment under normal situations when taking the drug, whether it be caffeine, NoDoz, or prescription sleeping pills. It just won't happen.

Mr. Mark Warawa: But you haven't answered the question. Is the threshold zero drugs?

We're saying the person is impaired because they're driving erratically. They've been pulled off the road. Now, we've found through a sampling, through toxicology, that there are drugs in the system, but to what level? Where is the threshold? With alcohol, we have the threshold.

Mr. Wayne Jeffery: With alcohol, you have 0.08%. With regard to drugs—and let me use the example of cannabis—some people will smoke a little bit of cannabis and show no levels of impairment; will show no driving signs, will show no driving symptoms. However, if they show driving signs of symptoms, and we find the drug as an analytical number—and we won't be putting numbers on this level, because you cannot correlate a blood level of a drug in an individual to specific levels of impairment.... If the first two things occur—the driving and the DRE evaluation that "I think you're under the influence of cannabis"—and then we find cannabis in the body fluid sample, it doesn't matter what the number is; all three situations will be met.

But to get to that third sample, to get the body fluid demand, you have to have the other two first, and that is the safeguard.

The Chair: Thank you.

Go ahead, Mr. Marceau.

● (0940)

[*Translation*]

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): Thank you very much, Mr. Chairman. I also want to thank the witnesses for coming to see us today and for their quite interesting presentations.

My question may seem a little strange but here it is. I think we all want to limit the number of accidents due to impaired driving. We want to avoid this situation. Yet I heard two of you say that Bill C-16 should not be approved. What do you suggest we do? Send back the government to do its homework? Are you saying to the government to forget about this bill and start over or to improve it? Mr. Quaye and Mr. Lomer, what practical suggestions do you have for us, as legislators, since we must consider this bill very directly?

[*English*]

Mr. Michael Lomer: What Mr. Jeffrey said was the test at the very outset—i.e., the one where your police officer at the outset.... He—and Mr. Warawa did it too—talks about dangerous driving, or a reasonable suspicion that there's impaired driving, neither of which are the tests you're enacting.

Read the proposed subsection 254(2). It talks about "reasonable grounds to suspect that a person...has...a drug in their body". That's it. There's no other threshold of impairment you could put in. "Reasonable suspicion of impairment" might help. There's no other threshold of dangerous or reckless driving, or anything like that; you could put that in there as well. Nothing's there; all it is is a "reasonable suspicion" of drug in their body, and that is too low a threshold.

In concrete terms, to address your question, I would suggest doing what Mr. Jeffrey talked about, because that's really what it's about. Yes, if you have an officer who is watching a car meander down a road and not obeying the signs, you have a reasonable suspicion that something's going on, and you're going to investigate. But what you have right now is simply reasonable suspicion of drug in their body. That's it, and that's in my submission just not enough. I think you're going to have to have more.

If you had dangerous driving, Mr. Warawa—in response to your question—they'd be arrested for that, even at the outset, and would be investigated. I can assure you that's what they're there for.

When you posit things we already have laws for, it doesn't assist when you're at what I would describe as on the threshold of breaking new ground—particularly new ground where, if it doesn't have more threshold tests such as Mr. Marceau requested us to address, you're going to have charter challenges to it. It just will happen, and you can see why. I'll just remind the committee that the Supreme Court of Canada, in Smith, struck down the seven-year minimum for importing drugs on the basis that it could apply to somebody going into the country with a joint of marijuana in his pocket. In fact, Smith came in with a kilo of cocaine, but the law was struck down on the basis of what could be.

I'm not trying to be facetious when I say you look at the threshold, because that's how the courts will interpret it.

[*Translation*]

Mr. Richard Marceau: Mr. Quaye.

[*English*]

Mr. Kwei Quaye: Thank you very much.

I would like to emphasize that CCMTA expressed conditional support for Bill C-16. The issue we currently have with Bill C-16 is that bringing in Bill C-16 in its current form will significantly undermine some of the tools we have in each jurisdiction to manage drinking and driving. What we are asking for is setting clause 8 in Bill C-16 to be reviewed and changed, so that Bill C-16 acts as a complement to drinking and driving laws, rather than as something that undermines the current drinking and driving laws.

● (0945)

[*Translation*]

Mr. Richard Marceau: Thank you.

[*English*]

The Chair: Mr. Macklin, please, for five minutes.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Thank you very much, Chair, and thank you, witnesses, for being with us this morning and bringing your perspectives to this review and debate over what we should do with Bill C-16.

First of all, Mr. Jeffrey, I think it's important for us to get a grasp of the state of research that's out there on levels of drugs within one's system—that is, active drugs within one's system—and what constitutes impairment. Can you give us any indication of what work is going on either in Europe or around the world in that regard? I know everyone feels relatively comfortable with the concept we have with alcohol and the Alert testing and the fixed levels. Can you tell us from your knowledge what is going on out there, and what we might expect in terms of some help in determining levels of impairment with other drugs?

Mr. Wayne Jeffery: With respect to alcohol, from the scientific literature that's been around, it's well known that we have 0.08%. As toxicologists—and I think we're united throughout the world in what we say on this—we do not have the data at the present time to state that at a certain level of a drug, at all levels, a person will be impaired. We do not have that knowledge right now.

In relation to what is being done in other countries for research, some countries have set arbitrary limits for impaired driving with certain drugs. Germany has done that; some states in the United States have set per se levels for certain drugs with no consultation with a toxicologist. Some levels are far too high; some levels are far too low.

There is roadside testing, called the ROSITA project, going on in Europe for roadside drug screening for five classes of drugs. It's a roadside stop to see if these drugs are in your system. If they find the drug, they will either go under an impaired driving or a body fluid demand, as is mandatory in Germany. Australia has similar laws in that area. At a roadside stop-check, there is mandatory urine or saliva testing at roadside; the impairment charge goes forward after that. It's the mandatory fluid sample first.

As a toxicologist who has been studying this matter for many years, I personally don't like those issues. I would rather see the driving issue, as Mr. Lomer stated, come first. If you had some reason with regard to driving, is it alcohol or drugs? Then you have the body fluid demand as the last test.

Of all the studies, whether they were in Europe, Britain, Australia, or the United States, the best programs the Canadian Society of Forensic Science has looked at and studied since 1989, since we were formed, are the field sobriety testing and the DRE program. That has withstood the challenges of the Frye test in the United States in 38 courts. Here is good evidence, scientifically validated evidence, of how this procedure will detect the drug-impaired driver. I wish that in toxicology we could say that at a specific level of a drug you are impaired, but we're not at that level now.

Studies of roadside testing are going on continually. Is a drug present, does that person show signs and symptoms of impairment? It has continued. My own personal opinion and our committee do not support roadside testing by police officers. This is a scientific method, an enzyme immunoassay test or other tests, and we feel the samples should be collected and the results of the analysis done in a forensic setting.

Hon. Paul Harold Macklin: When these drug analyses are done elsewhere, or at least the detection, does it detect the active level of the drug, or does it simply detect the drug in the system—in saliva, or however they're tested?

Mr. Wayne Jeffery: It is the drug in the system. With regards to cannabis, sometimes it will detect the active ingredient; otherwise, it will detect the metabolite. If it's for heroin, it'll detect the metabolite. It depends on which drug you're looking at. You can not say, even with this drug at roadside screening in your system, that it is the active drug at the time.

You may have a drug in the system that is positive, and the person may be impaired by a different drug altogether. These roadside testings being done in ROSITA only go for five classes of drugs; there are many other classes of drugs this roadside testing will miss. You may have a person who is impaired, do roadside testing, and find the drug analysis done by the police officer at roadside will miss it, whereas those samples will not be missed in a forensic setting.

● (0950)

Hon. Paul Harold Macklin: I would gather, then, that if we have difficulty in dealing with drugs in the singular within the system, multiple drugs detected in one's system would be that much more complex and difficult to deal with.

Mr. Wayne Jeffery: Yes, and this is what would happen, we hope, with our system. With low levels of alcohol, low levels of drugs, the role of the forensic laboratory is to be expert in doing that analysis. They could provide that expert testimony and support for the police officer.

The Chair: Thank you.

Mr. White, please.

Mr. Randy White (Abbotsford, CPC): Mr. Lomer, where you lost me credibility-wise is in trying to relate the person leaving Tim Hortons to there being a problem. I don't think the analogy you were using fits this whatsoever, do you?

Mr. Michael Lomer: Tim Hortons?

Mr. Randy White: Well, somebody loaded with coffee; that's what you were referring to.

Mr. Michael Lomer: Caffeine is a drug, but you don't define the drug you're going to allow your officers to investigate for at the investigative detention stage. If you don't define them, any drug.... And all they have to have is a reasonable suspicion.

Mr. Randy White: Do you really think that in this whole exercise, the police—all of the officials, everybody involved—would be chasing somebody or following through on an individual who's had four cups of coffee? Do you really believe that?

Mr. Michael Lomer: We have in Toronto now, as a result of a court of appeal case called Brown, a clear and convincing case of racial profiling, and it was used in an impaired driving stop.

I'd venture to say that where you can, with a reasonable degree of certainty, suggest that any person—or the majority of them driving—has a drug in their body, you have grounds for a stop. I am not trying to be facetious, and I'm not trying to lose my credibility here, but if we have racial profiling in Toronto—and the stopping resulted from that, and I know it's a hot potato issue, and it's one that's been argued—any potential, as I see it, for an abuse of the type of investigation, or where the investigation isn't clearly delineated as to what they can do and not do.... Yes, it has the potential for abuse.

Mr. Randy White: Okay. I just think you're missing the point on it.

But I want to get to Mr. Jeffery. I wonder if you could tell us the type of equipment that is used in all of this process of detecting drugs.

My understanding is that one piece of equipment to use in tracking one certain type of drug is fairly expensive. I'm looking at numbers around $12 million to set up this whole exercise and wondering how we do that with the equipment. Is there going to be equipment in every police regional office, or in some three special labs, as in the case of agriculture, in the country? How does it work?

Mr. Wayne Jeffery: Do you mean the body fluid analysis, or the equipment the police officer will need to do the drug recognition evaluation?

Mr. Randy White: I would say past that stage and into the analysis.

Mr. Wayne Jeffery: The equipment for the analysis stage that is set up for the analysis of drugs and the body fluid sample is already present in the RCMP forensic laboratories, the Centre of Forensic Sciences laboratory, and the Montreal laboratory. The instrument at present is there. Typically that instrument is a gas chromatograph mass spectrometer.The equipment is there to do the analysis, and it is being used in some impaired driving cases where body fluid samples are taken. It is the same analysis as is done for drugs and poisons.

Mr. Randy White: Let's get down to some physical specifics. How many of those pieces of equipment are there? Do the regional police in—I don't know—Surrey, British Columbia, or Abbotsford, British Columbia, have to use that lab, or do they have their own lab with the equipment?

Mr. Wayne Jeffery: Using the example of British Columbia, as in any province, a forensic sample, if a body fluid sample is taken, would come to the RCMP forensic laboratory in Vancouver. If it's in the prairie provinces, it would go to the RCMP laboratory in Winnipeg; in the Maritimes, to Halifax; in Toronto, it would go to the Centre of Forensic Sciences; in Quebec, it would go to the Quebec laboratory.

So the infrastructure for the final analysis is already set up.

● (0955)

Mr. Randy White: But it seems to me that when you're dealing with impaired driving today, the test is done locally; the whole process is a municipal exercise. Are we getting into an exercise of something like an incident in Halifax where you're waiting, two, three, or four weeks, and you're backed up because other police forces have sent in their samples?

Mr. Wayne Jeffery: I think the forensic laboratory systems in Canada, including the RCMP and the Centre of Forensic Sciences, are well equipped. They may be understaffed at the present time to do all of the analysis, but I can see this procedure gradually occurring and more staff being accumulated in the forensic laboratories to handle the analysis.

My concern at the present time is not the forensic analysis; I think that is in place. My major concern would be, right now, the training of the police officers throughout Canada in field sobriety testing, and the DRE evaluation to make those demands for the body fluid samples.

The Chair: Thank you.

Mr. Marceau

[*Translation*]

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

Mr. Lomer, unless I'm mistaken, there seems to be a big difference between the number of charges laid and the number of convictions for drugs-impaired driving on the one hand and the number of charges laid and the number of convictions for alcohol-impaired driving on the other hand. You have a 25-year experience in this field. What more can you tell us about this comparison? We can talk about the rate of conviction. What are the factors that produced these convictions and so on? Finally, what problem are we trying to solve with Bill C-16?

[*English*]

Mr. Michael Lomer: As I see it, the difficulty is that on the one hand, we have a great deal—one might even say thousands of years—of experience vis-à-vis the connection between impairment and alcohol. We consequently don't have a great deal of difficulty in even drawing what are called arbitrary lines, but they're sort of minimum social standards—0.08%, and that sort of thing—so we're quite able to make the connection between the results of a roadside demand to blow into an Alcohol Alert machine to test for alcohol and determining from that whether or not we're going to let you continue driving.

We don't have the same wherewithal when it comes to drugs. We really don't. So I understand why we are moving towards the DRE. In fact, I'm not here to say that this is a bad idea. All I came to say was that with respect to drugs, we can't use the same threshold as we use for alcohol, because our experience with alcohol is so much greater. You're going to have to identify your threshold when it comes to drugs. I can't put it any more clearly than that.

[*Translation*]

Mr. Richard Marceau: Do other witnesses have any comments? Mr. Jeffery.

[*English*]

Mr. Wayne Jeffery: I think what's being said with respect to the driving aspect is you have to prove—and I agree with part of what he said—that the drug that is in the system is what is causing the impairment. We'll never be able to define a threshold for each specific drug. I think the threshold is well set for paragraph 253(a) when it says, “you have reasonable suspicion that your abilities are impaired to operate a motor vehicle”—it's already written there—“by alcohol or a drug”. It's already written in there—“or a drug”.

"Drug" is not defined right now in paragraph 253(a). The threshold for impairment would be the two factors of the police officer—the driving infraction and the failure of the field sobriety test.

● (1000)

The Chair: Thank you.

Mr. Quaye.

Mr. Kwei Quaye: I have a comment on your very last question about what we're trying to solve here with Bill C-16.

We know alcohol-impaired driving is a problem. There is evidence to indicate that drug-impaired driving is also a problem. Police do not currently have the appropriate tools to handle the latter.

CCMTA believes that Bill C-16 provides an opportunity for police in Canada to have the necessary tool kit to help us manage this problem of drug-impaired driving. We do believe that drug-impaired driving is killing people here on Canadian roads as well, and that the sooner we get to address it, the better.

[*Translation*]

Mr. Richard Marceau: Thank you.

Thank you, Mr. Chairman.

[*English*]

The Chair: Ms. Sgro, please, for five minutes.

Hon. Judy Sgro (York West, Lib.): Thank you very much.

As for the issue in British Columbia, Mr. Jeffrey, are any other provinces using the DRE approach to the suspension and so on to deal with this?

Mr. Wayne Jeffery: Yes, at present we have drug recognition expert officers in all provinces in Canada.

Hon. Judy Sgro: What about the tactic being used in British Columbia, which is the suspension?

Mr. Wayne Jeffery: Well, we've had more use with it. We have more police officers in there now. The 24-hour suspension in British Columbia was changed two years ago to include drug-impaired suspension. Before that, the suspension was just for alcohol; we can now use the DRE protocol, or part of the DRE protocol, for the 24-hour roadside suspension for drug impairment.

Hon. Judy Sgro: How are they rating its success? Have there been any challenges to that program?

Mr. Wayne Jeffery: There have been challenges to the 24-hour suspension, yes, and they have stood up in the courts.

Hon. Judy Sgro: Is there a reason other provinces are not moving in that direction?

Mr. Wayne Jeffery: They may have the 24-hour suspension for alcohol, but I'm not aware of their having the 24-hour suspension for drug impairment. I believe Manitoba may have it, but I can't say for sure.

Hon. Judy Sgro: When we talk about the definition for impairment, that should be the issue. It shouldn't be whether it's drugs or whether it's alcohol. The whole issue is impaired driving. That is what we need to focus on—that, and what the definition is, and clearly for a routine check, not for someone who is clearly driving erratically, or whatever.

Mr. Wayne Jeffery: That's correct.

Hon. Judy Sgro: I'll move on to the comment Mr. Lomer made about how, on a normal roadside check of people, it's very easy to find someone who doesn't get along with someone, and there's another issue of personality. The first thing you know, they're going to decide to get you to blow or give you a problem. That could happen very easily. I think we have to keep that in question.

It's that impaired issue, that ability to be able to drive that car reasonably, regardless of whether it's alcohol, illegal drugs, or other over-the-counter or prescription drugs; that's where we need to narrow it. It's the issue of being able to look at someone and suspect that within reasonable terms they shouldn't be driving the vehicle—whether it's related to alcohol or something else—and suspending them, towing their car away, and having them take a taxi home. If that's what our objective is—to keep the streets safer—I think once a person has been suspended and had to go through that experience, their insurance goes up, I would expect, and other issues would happen.

Mr. Wayne Jeffery: May I comment on what is happening? If you look at the statistics for impaired driving—I've just come from a training course—in the city of Vancouver, the number of impaired driving charges that Vancouver city police have laid has dramatically dropped. The number of 24-hour suspensions has increased dramatically, so the 24-hour suspension is a short gap to solve the problem, I think.

Hon. Judy Sgro: Is it not a reasonable one, given the courts and given all the problems once the officer lays the charge—the length of time, the impact, and so on?

Mr. Wayne Jeffery: At the present time in British Columbia, what is happening is that the police officer can suspect your driving is impaired by drugs and have to prove that through field sobriety tests. There is no mandatory requirement for that individual to do those at the present time. He can get out of the car and say he's not doing any tests. The police officer's hands are then tied in regard to a 24-hour suspension for alcohol and drugs.

As I said, the present law is there for impaired driving by drugs. Those two situations, the mandatory field sobriety test and the mandatory fluid sample, preclude the police officer from gathering the proper evidence for drug impairment.

● (1005)

Hon. Judy Sgro: Mr. Lomer, what else would we need to do? You're saying we're not defining it enough, and I can clearly understand that. It's going to be very difficult, given the amount of drugs that people take and the combination of accidentally mixing with something else so they don't even realize they're finding themselves in that situation. How are we going to narrowly define that?

Mr. Michael Lomer: Well, I had suggested a couple of things.

Just so that you understand, the case law basically tells us that at the trial level the Crown has to prove beyond a reasonable doubt that your ability to drive is at least somewhat impaired—"slightly impaired", I think, are the words in a case called R. v. Stellato. It's not a high threshold, even though it's beyond a reasonable doubt; there just has to be some evidence of impairment. Either the driving is bad or the subsequent behaviour is bad. Between the two, you don't need a blood alcohol level of anything, if you combine that with proof of consumption of a drug.

In terms of where you start your threshold with drugs, it's different in kind from alcohol. Our experience is not at all the same. If you're going to allow the type of investigation we're talking about, the type that I would suggest passes charter scrutiny, you're going to need evidence of bad driving or evidence of some impairment.

The impairment may turn out to be not impairment by a drug. You could be diabetic and lapsing into a coma. Quite frankly, a colleague of mine—I was discussing this with him—is a diabetic, and he says that if he lapses into type 2—he's a type-2 diabetic—he doesn't think there are many people who can tell the difference between his being extremely impaired and his being quite ill. Now, I'm going to have to trust to the experts that they can, but he also tells me that there's even a faint odour of alcohol on his breath that comes from being diabetic.

It's not going to be easy, but those are two suggestions I have—driving and behaviour. Link it with drugs, in particular, on the reasonable suspicion test.

The Chair: Thank you.

We'll go to Mr. Thompson. Five minutes, sir.

Mr. Myron Thompson (Wild Rose, CPC): I'm listening to this with great interest, because I'm finding there's a gap somewhere in here. In relation to impaired driving and reducing the risks on the roads, we in this committee want to do everything we can to stop it, to the best of our ability, so we look at prevention and we look at the deterrent factor—the penalties that follow convictions.

I have quite a sample of what they do throughout the world in regard to impaired driving laws. It ranges from things as ridiculous as that you must attend hearings on your behaviour, panelled by politicians, to the policy that your first offence is your last one, because you'll be executed. I think you're aware of that; you know it exists. Bill C-16 is something we've been trying to get in here that fits in the middle of all that, while we keep in mind that there are things we need to do to prevent these things.

I was a principal of a high school for 15 years. We brought in program after program after program to young people about driving under the influence and driving in general. I personally never saw a lot of positive effectiveness come out of that. It just didn't seem to jell. Young people are going to go party. They're going to drive and drink. They're going to smoke their pot and drink. It didn't seem to matter. We have to do something that seems to matter.

The other example I have is one of my young 16-year-old ladies going home after school. She was turning left on a two-lane highway and was rear-ended by a gravel truck. Her wheels were cranked and the gravel truck knocked her in front of a logging truck. It ended up in a fatality of great magnitude, a horrific accident.

All the tests done for drugs were done on the deceased. Neither driver of either truck would submit to any testing, even when the fireman who attended the scene suspected that the gravel truck driver who hit the young lady from behind seemed to be impaired.

We need laws to start taking care of these kinds of situations that end up in a ridiculous state. No charges laid. One dead girl. Parents heartbroken. Why did this accident occur, when she was only trying to turn on a road to take her home from school?

I live in a small town. We have a community court. The judge comes once a week. Every week, 90% of the cases are impaired driving, impaired driving, driving under the influence. It doesn't seem to cease. I want to see something in this Bill C-16 that's going to also act as a deterrent. Do you have any suggestions about what we can do? I really get tired of hearing about how we have to make sure it meets the charter test, it's got to meet the charter test. We have to get something in place that meets the safety test.

● (1010)

The Chair: Mr. Lomer.

Mr. Michael Lomer: Mr. Thompson, I think the law actually is there and available in the case that you describe. If a fireman has a reasonable suspicion that one of the drivers has alcohol in his body, he advises the investigating police officer there. They have the power to make the demand and the test, so I'm not sure—

Mr. Myron Thompson: Has that been in effect for quite a while?

Mr. Michael Lomer: That's the law as we've had it for a long time now—20-odd years, I would think, since the first Alcohol Alert came in.

Mr. Myron Thompson: Well, I was personally told by the police officer, and this is back in 1996, that they could not force this individual to go in for testing. They had to take him to the hospital emergency room.

Mr. Michael Lomer: Well, it's different for blood tests, but in terms of the Alert—

Mr. Myron Thompson: That's what they wanted to do, a blood test.

Mr. Wayne Jeffery: Mr. Lomer is correct with regards to alcohol. As I said, if you thought he was impaired by drugs, there is no law to say that person must give a body fluid sample for drugs. That is the crux of what I think Bill C-16 has to fix now—the individual charged does not have to submit to standardized sobriety tests or a body fluid demand to prove the drugs. Those are the two things police officers need to prove drug impairment.

Mr. Myron Thompson: On that point, I might add that as a result of that accident I've had a private members's bill in the mix for quite some time, to try to do just that, to force this kind of testing, particularly in cases of fatalities and injuries. And it doesn't exist.

This police officer said, we have to get a blood sample, and this guy would not submit to one.

Mr. Michael Lomer: Why didn't they do the breath sample?

Mr. Myron Thompson: There was no obvious alcohol. There wasn't a smell or an odour or anything. They suspected this guy had been driving for several hours and was using those...what do you call them?

Mr. Michael Lomer: Amphetamines of some sort?

Mr. Myron Thompson: Some sort of pills; they call them bennies or something. But they had to have a blood test to indicate that.

The Chair: Thank you, Mr. Thompson.

Mr. Marceau. You're fine?

[*Translation*]

Mr. Richard Marceau: Yes.

[*English*]

The Chair: Mr. Cullen.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chair.

Thank you to the witnesses.

Mr. Jeffery, I'm interested in the model you spoke about. Because we don't have the research to deal with the thresholds that will cause impairment with drugs, if I understand it, first of all your model says there has to be evidence of erratic driving. Secondly, if the police officer then pulls the driver over and there is some evidence that the person might be under the influence of something, they do the field sobriety test. If the person fails that, they would be asked to submit a bodily fluid. Is that right?

● (1015)

Mr. Wayne Jeffery: That's correct.

Hon. Roy Cullen: Okay. Then if there is some evidence of drug within their bodily fluid, it would be a sort of prima facie cause and effect, that the reason for their erratic driving was....

Let me just finish. You may disagree, but I'll give you a chance to refute that.

Let's assume for the moment that this is the case. Do there have to be any minimums set? I know that's the dilemma, because you don't have the technology or the research to set that. But we've heard there is a lot of case law about impaired driving, because a lot of yuppie fat cats or whatever have a lot of high-priced lawyers who can develop all this case law.

Let's say there's a trace of cocaine—I'm expressing this in layman's terms—and someone argues, “Well, there was a trace, but the reason for my erratic driving was that I've been under a lot of stress lately. My wife just left me, I just lost my job, and I was driving and my mind wandered. I had some cocaine two weeks ago, but that wasn't the cause for my driving erratically”. Has anyone tried that? Tell me if I'm on the wrong path here. I like the idea of not having limits, because we don't have the research, but has someone tried that, or will someone try that?

Mr. Wayne Jeffery: You're absolutely correct in what you're saying. You have to have driving...you have to have the failed field sobriety tests to show the drug impairment, and you have to have the body fluid sample demand. What has to happen is that body fluid sample demand, the drug that is identified, must match what is called by the drug recognition expert officer and be consistent with his findings. If a person has a trace of cocaine in his sample, then he's not going to fail the field sobriety tests. It is the field sobriety test that has been standardized and documented to show physical signs of impairment and the drugs that are in the system.

So even though he was picked up for some other reason—for driving with poor attention or something like that—and a trace of cocaine is present in the system, the person will not show it, and he will not then fail the field sobriety test.

Hon. Roy Cullen: I see. Yes. So he could argue that his mind was wandering, but if they asked him to put his finger to his nose or to walk a straight line, presumably he'd be able to bring it together to concentrate on that.

Mr. Wayne Jeffery: That is correct.

Hon. Roy Cullen: Okay. What about when the officer goes to the car, the person rolls down their window, and he can smell marijuana? I mean, you could look at a person and they don't smell of alcohol, you can't smell any marijuana smoke, but they're slurring their words or their pupils are dilated—whatever these officers look for. Do they have to make a guess and say, “I think you're high on cocaine or marijuana”, or do they just say, “Do the field sobriety test. I don't have to bet on any particular drug. If you fail that field sobriety test, we're going to take the blood sample and run it through a bunch of tests.” Will that pick up any level of any kind of drug or...?

Mr. Wayne Jeffery: As I said, there are two parts: the field sobriety tests and the drug recognition expert officer evaluation. Once the person fails the field sobriety tests, the drug recognition expert officer will be called. He'll make a determination, through this 12-step procedure, whether that person is under the influence of any of seven different classes of drugs that the police officer can do.

Hon. Roy Cullen: They don't have to bet on one.

Mr. Wayne Jeffery: They don't have to bet on one.

Hon. Roy Cullen: It could be one of these.

Mr. Wayne Jeffery: It's one of these classes. Then that body fluid sample has to match what his call is.

Hon. Roy Cullen: Okay, so the technology is there. If they take a bodily fluid, they'll be able to establish that there is an element of one of those drugs or one of those drug sets.

Mr. Wayne Jeffery: Yes.

Hon. Roy Cullen: I'd like to come back maybe to any of the panellists who want to comment here, and I'll throw this in quickly. I think I have a bit of time, Mr. Chair.

The problem, as I see it, is the chronic reoffender. I must say, you read about people who are pulled over for drunk driving, let's say, but it could be any kind of impaired driving, and who get their licence suspended; and they've done it maybe five or six or seven times.

Now, the person who drives when he or she has been suspended is a problem. I'm not sure how you fix that, because when they get in the car, they're going to drive even if they're not supposed to. Usually it's too late then; they've run into someone or something. But where do we have authority to...? Is it under the provincial highways authorities? If someone is driving impaired, the 24-hour suspension may be the first time, but the second time it kind of ratchets up very quickly so that, after a third offence, surely someone should be pulling that person's licence, pulling it for a year or something. Where does that authority rest? Does anyone do that?

Mr. Kwei Quaye: I can respond.

Yes, it's done in a number of jurisdictions, though not very many. As part of CCMTA's strategy to reduce impaired driving, there is a recommendation that jurisdictions should look at the 24-hour suspension programs and make them an opportunity to help address the issue of impaired driving.

I'll give an example. In Saskatchewan, for a new driver, your first 24-hour suspension will earn you an additional 30-day licence suspension. If you have a second 24-hour suspension, you'll get a 90-day suspension. If you are a so-called experienced driver in Saskatchewan, your first one is for 24 hours, and currently your second one is for 24 hours, but the third one is a 90-day roadside suspension. Associated with that will be a requirement to attend an education program, or you could go through assessment, which could spring you into, again, education or rehabilitation.

The other Canadian jurisdictions are all looking at these 24-hour suspensions. In fact, CCMTA recently put forward a model, or a tool, to allow jurisdictions to bring in programs that will toughen this issue of 24-hour suspensions.

We recognize that a driver who gets caught the first time at a roadside by a police officer would have been driving impaired about 100 to 200 times before he or she ever came into contact with a police officer and got caught. So at every single opportunity, what we are trying to do is to turn that opportunity into a chance of trying to rehabilitate that driver and of putting in something tough enough to be a deterrent against further similar events.

For people who've been convicted of a drinking and driving offence, lost their licence, and continue to drive, quite a number of jurisdictions—most jurisdictions right now—have a vehicle impoundment program where your vehicle will be impounded, initially for 30 days. If you do it again, the vehicle will be impounded for 60 days. Almost all the jurisdictions have that.

So we have a fairly comprehensive tool kit that we are working with. Not every jurisdiction is there, but we are slowly getting there. As I said earlier, building that infrastructure will position us to deal with this problem of impaired driving. With drug-impaired driving, once that comes into place, we see the opportunity of piggybacking on that at the provincial level so as to make it as effective as possible.

● (1020)

Hon. Roy Cullen: Well, stay on that.

The Chair: Thank you.

I understand Conservative member Mr. Warawa is going to split his time with Mr. White.

Oh, it's just Mr. White.

Mr. Randy White: I need some clarification. When an individual is picked up for impaired driving, would all cases end up having a body fluid test?

Mr. Michael Lomer: Do you mean a blood test, Mr. White?

Mr. Randy White: Yes.

Mr. Michael Lomer: If the impairment is due to alcohol, it's not really necessary because—

Mr. Randy White: But how do you know it's just alcohol?

Mr. Michael Lomer: Let me posit, first of all, what normally happens in impaired driving offences due to alcohol alone. The suspect is taken in. He's either failed the alert or was already demonstrating enough symptoms that the officer knew and took him in. If he blows over 0.08, he'll get charged with impaired and over 80 milligrams in the blood. There won't be any drug testing, unless there are some other indicia that are not consistent with the impairment by alcohol.

Mr. Randy White: Mr. Jeffery, could you estimate how many of these would go the full extent of having the body fluid test?

Mr. Wayne Jeffery: First of all, as Mr. Lomer said, if alcohol over 100 milligram percent is ruled out, then we'd be going down the drug-impaired driving road. If the standardized field sobriety test and/or the DRE officer determined that there was drug influence, then a body fluid demand would be made at that point.

Using the example of British Columbia, where I am most familiar with the DRE officers, in the few full drug evaluations that have been done, in up to about 80% of the DREs, a body fluid sample would be taken. The person may say no, and the police officer may say no, there is no impairment, or this is a medical cause. Once you have the driving and the field sobriety tests and alcohol is ruled out, if there is drug impairment, then, yes, a body fluid sample would be used.

Mr. Randy White: I'm trying to get a handle on the number of actual cases we're possibly dealing with here.

Mr. Wayne Jeffery: In British Columbia, using the data we had, one out of every ten fatals was caused by drug impairment. I did that analysis and I think that is a low number. With respect to drug impairment, they say that 10% to 40% of those drivers who blow under 100 milligram percent are impaired by drugs. So it's not going to be a huge number of cases going to court, but it's not going to be a small number.

At the Canadian Society of Forensic Science, we have gathered data for many years on how many drug impairment cases are going to court, because that analysis has to be done at one of the forensic laboratories in Canada. And on a yearly basis, it has been fewer than 200 cases a year. That was when body fluid samples were taken on a volunteer basis and charges went forward. There will be more than that because there will be the demand for it. But I don't see it initially being a very large number because we do not have police officers trained right now in all jurisdictions. Once the samples are done, maybe one out of every 100 impaired drivers will blow under 100 milligrams percent and will be charged with drug impairment.

● (1025)

The Chair: Mr. Lomer, do you have a comment?

Mr. Michael Lomer: No, it's all right. Thank you very much, Mr. Chair.

The Chair: Mr. Warawa, you have about a minute and 15 seconds. Do you want to wait?

Mr. Mark Warawa: I will wait until the next group. Maybe Mr. White has more questions.

The Chair: I thought you were finished.

Mr. Randy White: No, I'll finish them, Mr. Chair.

The Chair: Mr. Macklin.

Hon. Paul Harold Macklin: I want to pursue a little bit further the issue of where we are in the technology area.

First of all, Mr. Jeffery, can you give us some indication of what other drugs are detectable by simply testing breath, beyond alcohol?

Mr. Wayne Jeffery: None.

Hon. Paul Harold Macklin: Therefore, a new machine, a roadside testing machine, if there was something developed, would have to do something other than simply test breath.

Mr. Wayne Jeffery: Yes. There is no roadside instrument out there that will test breath for all drugs. Alcohol, being a volatile, is easy to test for in air. Drug samples are not volatile. They end up in blood, urine, or saliva. Those are the fluid samples of choice used for analysis. At roadside testing we can test for five classes of drugs. However, we don't know the level of the drug that will cause impairment.

The roadside screening tests done by police officers now for saliva or urine are prone to false positives and false negatives. They are not 100% proof positive that the class of drug is present. To use the example of narcotics, the test can show positive for an opiate. Is that opiate codeine or is that opiate heroine? The police officer at roadside testing would not know that, and that sample would have to be further analyzed in a forensic setting.

What is the point of doing a screening at roadside when forensic testing in certified forensic laboratories, which all are in Canada now, will do? I just don't see the value of roadside testing by police officers.

Hon. Paul Harold Macklin: Under what is proposed in this bill, you eventually get the toxicology report back that affirms that there was a drug in a person's system. Are we going to have to bring in the toxicologist as a witness to demonstrate there was impairment in these cases? Or do you think that the DRE's expert testimony on what was observed, along with the field sobriety test, will be enough to make the case for impairment?

Mr. Wayne Jeffery: If and when this law is passed, we will initially bring in the toxicologist to support it. But in the United States, for example, it is very seldom that the toxicologist will go to court. They rely heavily on the police officers, the impairment, the DRE evaluation. The toxicologist's report is there as supporting evidence. I do not see the toxicologist being called to court all the time.

● (1030)

Mr. Michael Lomer: There are a myriad of considerations that might come in. It depends in part on the defence being put forward at the trial. I can see, at the outset, calling the toxicologist to explain what it means. If you have metabolites of cocaine in the system, does that indicate impairment or recent consumption? How long do metabolites last? Cannabis tends to go into the fat and last for weeks, while other metabolites such as heroine don't last very long at all. We're going to need explanations. The courts are going to want to know the significance of the evidence.

Hon. Paul Harold Macklin: Do you see this as the way we would build our law towards a threshold—through a series of cases that would develop evidence of what constitutes impairment?

Mr. Michael Lomer: I do. You're talking about trying to catch much lower levels of impairment than we've contemplated before. I'm not suggesting this is a bad idea in any way. In my practice, I've seen that the impaired-by-drug cases are really impaired; there's just no issue. Usually these are guilty pleas. You have so much evidence that they don't even go to trial. The ones you're talking about, the ones who are much more mobile or ambulatory, are a matter of trying to find out where the appropriate line is. The line is the ability to drive. This ability is impaired to some degree by alcohol or a drug. That's what our law is. How we get there depends on the case and the difficulties of proof.

Hon. Paul Harold Macklin: But as you indicated, it's to some extent an arbitrary number that we've picked, even for alcohol.

Mr. Wayne Jeffery: The alcohol number is not arbitrary. We had enough data to show that once a person gets to 0.08 their ability to drive a motor vehicle is impaired. We can say that at this level everybody is impaired. With respect to drugs, we cannot do that. Take cannabis. You may have a person at 2 ng/ml who can drive and another at the same level who will show gross signs of impairment. It has to be the signs of impairment that are the factors; that is the threshold. I agree with Mr. Lomer: you must show that threshold for impaired driving.

Mr. Mark Warawa: Thank you, witnesses. I'm finding this very informative.

I'd like to address the issue of how roadside suspensions are being handled and whether they are effective. My understanding is that if somebody is pulled over for driving in an unsafe manner—and they're suspected of impairment because lack of sleep, drugs, or alcohol—the police have the authority to impose an immediate 24-hour suspension. Is that correct?

Mr. Michael Lomer: That's not quite the way it is, at least in Ontario. Perhaps Mr. Quaye can speak for every other province. Ours is a 12-hour suspension, and they have to blow a "warn" on the Alert machine. The Alert's calibrated to between 50 and 100, essentially.

Mr. Kwei Quaye: It's similar in the other jurisdictions as well. You have to blow into a roadside screening device. If you fail the device you will get a 24-hour suspension. In Ontario it's a 12-hour suspension. Quebec doesn't have a short-term suspension of that nature. In Manitoba, if you fail the SFST you are issued a roadside suspension as well.

Mr. Mark Warawa: Okay. Thank you for that answer.

I got that information from a police officer, who shared that they have discretionary decision-making. If they believe a person is impaired they can have that person taken off the road. I'm getting different information.

● (1035)

Mr. Kwei Quaye: I'll give you the example of Saskatchewan. If they feel you are impaired they can issue you a 24-hour suspension, but technically speaking you have to fail the roadside device.

Mr. Mark Warawa: Okay.

Mr. Jeffery, I have a question for you related to a vehicle crash approximately two years ago. You're from Vancouver, so you're probably familiar with this. It was fairly high profile in my riding of Langley. It happened just north of Highway 1 on 264th—a Mustang, two young men in the back seat died.

We don't want to build legislation based on a single incident, but I'm piggy-backing on what Mr. Thompson used as an example. In that crash there was impairment. The samples were not taken willingly, but happened to be taken at the hospital, and I don't believe they were able to be used in the case. The person was found guilty of dangerous driving causing death, but impairment because of the marijuana was not taken into consideration.

My question is, if we had Bill C-16, would it have made a difference in that case?

Mr. Wayne Jeffery: Yes, it would have.

I'm very familiar with that case. The problem specifically was the continuity of the blood sample. As the judge outlined in his remarks, they could not prove the blood sample was from the actual driver. The case really had nothing to do with impairment by cannabis at the time, because they could not prove whether that sample was from the driver or from the passenger.

That sample was taken at a hospital and analyzed at another laboratory, not in a forensic setting. Unfortunately, the continuity of the sample was compromised. If it had been done under Bill C-16 with a police officer present, and the blood sample had been taken to a forensic laboratory, that would not have happened.

Mr. Mark Warawa: So the field sobriety test wouldn't have been done in that case because the person was in the hospital.

Mr. Wayne Jeffery: No. The police officer who did the investigation of that case was a field sobriety test officer at the time, and saw no signs of impairment of the driver. There was an investigation after the fact. When the person went to the hospital and samples were taken for other reasons, cannabis came to light. That was where the samples were compromised.

Mr. Mark Warawa: Okay. So if we had Bill C-16, could a sample have been ordered to be taken?

Mr. Wayne Jeffery: If the police officer had seen signs of impairment at that time, a blood sample would have been taken. But in this specific case the police officer at the time didn't see signs of impairment, so a sample would not have been taken at that time.

Mr. Mark Warawa: Thank you.

The Chair: As there are no other questioners on the list, we shall conclude this portion of our hearing today.

Thank you very much for your presence, and your very full and frank disclosure to our questions.

[*Proceedings continue in camera*]

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